M A N I T O B A

THE MOTOR TRANSPORT BOARD

In the Matter of a Proposal to Expand the List of Designated Commodities; In the Matter of The Highway Traffic Act (Manitoba); and in the Matter of The Motor Vehicle Transport Act (Canada).

Joint Public Hearings with the Alberta Motor Transport Board and the Saskatchewan Highway Traffic Board held in Winnipeg on Wednesday, August 7th, Thursday, August 8th and Friday, August 9th, 1985; in Calgary on Tuesday, August 13th and Wednesday, August 14th, 1985; in Edmonton on Thursday, August 15th and Friday, August 16th, 1985; in Regina on Tuesday, August 20th and Wednesday, August 21st, 1985; and in Saskatoon on Thursday, August 22nd, and Friday, August 23rd, 1985.	) Board Panel:	
	D. S. Norquay,	Chairman, Manitoba Board & Panel Member
	R. R. Ramsay,	Vice-Chairman & Board Member
	P. Burtniak,	Vice-Chairman & Board Member
	A. Kachur,	Board Member
	H. E. Gordon,	Board Member
	O. Bejzyk,	Board Member
	W. H. Matthew,	Board Member

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MANITOBA

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DECISION

I. BACKGROUND

A. Commodities Under Consideration.

On April 6, 1985 the Board published a Notice of its intention to hold public hearings in respect of a proposal to significantly expand the list of commodities which may be transported by any qualified motor carrier without proof of public need or convenience, which commodities are defined in the Highway Traffic Act as "designated commodities". The commodities proposed for consideration (as described in the Alberta Commodities Index) were as follows:

1. Sand, gravel, crude stone and soils
2. Nursery and greenhouse stock and horticultural commodities (including peat moss)
3. Fertilizers (including Potash)
4. Agricultural chemicals, crop, seed and herbicide treatments
5. Fresh vegetables
6. Fresh fruits
7. Fish - fresh or frozen
8. Unmilled grains
9. Animal feed and feed ingredients
10. Salt in bulk
11. Crude wood products
12. Wood pulp
13. Lumber (dimensional stock)
14. Composition sheathing (including gypsum wall board)
15. Buildings or structures
16. Agricultural equipment
17. Recreational trailers and mobile homes.
18. Domestic Livestock
19. Race and show animals
20. Armoured car services
21. Towing and hauling of motor vehicles
22. Newspapers
23. Magazines and periodicals
24. Water and ice (inedible)
25. Waste, domestic garbage refuse and scrap materials
26. Other service vehicles, ambulances, escort vehicles, taxis and liveries
27. Metal Ore, metal in ores and concentrates
28. Coal, Crude Petroleum/Salt water emulsion
29. Shipping and distribution containers and enclosures (empty)
30. Used Household Goods movers
31. Damaged or rejected goods, previously moved.
32. Corridor operations

B. Hearings Held and Submissions Received.

The Board Chairman, D. S. Norquay, was authorized by the Board to sit as a single member upon the hearings and report thereon to the Board with his recommendations, pursuant to Section 326(15) of The Highway Traffic Act.

Public Hearings were held jointly with the Saskatchewan Highway Traffic Board and the Alberta Motor Transport Board on the dates and in the locations above mentioned.

Those who filed written submissions with the Boards and those who made oral representations at the hearings are listed in Appendix A.

The Chairman's report and recommendations were reviewed by the Board at meetings held December 20th, 1985, and January 22nd, 1986, at the conclusion of which the Board approved the issuance of this decision.

C. Context of the Hearings.

It is important to be aware of the context of the Hearings within a greater regulatory reform movement.

The first Ministers meeting of February, 1978, issued a Communique which stated that "the burden of government regulation in the private sector should be reduced". Subsequently, the Economic Council of Canada was commissioned to carry out studies on regulation, and in 1981 published its final report, Reforming Regulation, which recommended that the regulation of the trucking industry should be substantially reduced.

Most significant to trucking regulation, on February 27, 1985, the Federal, Provincial and Territorial Council of Ministers Responsible for Transportation and Highway Safety, meeting in Ottawa, signed a Memorandum of Understanding by which they undertook to take action to achieve a number of significant reforms, including the development and implementation of a common list of commodities, the transportation of which may be undertaken without a requirement to prove public convenience and necessity.

As well, within Manitoba, a Task Force studied highway transport regulatory issues for two years and in its report, published September, 1984, recommended that the list of designated commodities be extended.

In addition, it can not be ignored that in the United States, the Interstate Commerce Commission has moved fairly swiftly to eliminate any meaningful economic regulation of interstate trucking. Canadian extra-provincial entry control is now perceived by the American trucking industry as an unfair non-tariff barrier to trade in trucking services. Their substantial lobby has been very effective in convincing Washington to place substantial pressure on Ottawa to deregulate the Canadian market.

The valid complaints regarding the regulatory system described by numerous parties throughout the hearings, discussed below, clearly establish the legitimacy of the regulatory reform movement. It is imperative that reform be undertaken in response; the Board must decide upon its role in determining the extent of change necessary.

II. ECONOMIC REGULATION

Although the proposal for consideration was to establish a limited number of designated commodities, due to the nature of the submissions received, the fundamental policy question - should economic regulation be eliminated entirely and free market forces solely determine the provision of transport services - was placed before the joint panel, and cannot simply be ignored in the Board's decision.

Accordingly, it is necessary to discuss in detail the rationale for economic regulation.

For industries in the private sector of the economy, competition is the economic regulator. What is produced, in what quantity and quality, by whom and at what price are all determined primarily by the competitive market - the cumulative decisions of all buyers and sellers each acting in their own interest.

Legislatures and courts have long deemed transportation to be affected with a public interest. Transportation industries have a long history of being subject to regulation as public utilities.

In engaging in the regulation of transportation as a public utility, the government replaces unrestrained competition with an administrative tribunal as the ultimate economic regulator. The tribunal (together with varying levels of competition) determines the acceptable level of industry performance by controlling entry and exit (and thus the level of competition), by enforcing a common carrier obligation to serve, by prescribing conditions of service and (usually) by determining rates.

The rationale for such a system of economic regulation is simple; transportation has been considered too important to leave to the uncertainty of free market forces. Transportation is an essential input to all other industries. Thus, the economic prosperity of a community is conditional upon the provision of adequate and reliable transportation services at reasonable cost. By imposing a system of economic regulation, a legislature indicates it has made the fundamental policy decision that an acceptable level of industry performance will not result from unfettered competition. In other words, elected representatives have made the value judgement that the cumulative decisions of buyers and sellers of transport services, each acting in their own interest, will not result in transport resource allocations considered to best serve the interests of the nation.

It has historically been feared that a freely competitive highway transport market would result in a chronically unstable industry, and thus a lack of reliability and continuity of service and insufficient investment in appropriate modern equipment; the potential for abuses of market power; excessive price discrimination; inadequate service levels to small and remote communities; and a general inability to fulfill public goals which by their nature are not reflected in individual decisions of buyers and sellers.

Assuming the policy makers who established trucking regulation were correct in their assumptions regarding what would follow from unfettered competition, there is little doubt economic regulation has served the country well. Canada indeed has a stable highway transport system, without excessive market concentration, that adequately serves all reasonably accessible communities. The system connects every part of our expansive nation to facilitate a greater Canadian economic community, allowing all regions relative prosperity.

However, in recent times many have expressed very serious doubts regarding the fundamental assumption that unfettered competition would not result in a highway transport system that best serves the public interest; that Canada's highway transport system has achieved its present level of performance in spite of rather than because of regulation.

III. THE LEGISLATIVE CONTEXT AND ONUS OF PROOF

The Manitoba Motor Transport Board is established under the provisions of the Highway Traffic Act, S.M.1985, c.3(The Act). Subsection 284(1) of The Act prohibits anyone from transporting persons or property for compensation without holding a certificate from the Board. Subsection 290(2) allows the Board to issue a certificate when it finds "from the evidence and its consideration of the matter, that the existing facilities for transportation are insufficient, or that public convenience would be promoted by the establishment... of the proposed transportation service....".
Subsection 289(1) provides an exception to this entry control test. It reads as follows:

"289(1) The transport board may, after a public hearing, by order designate a commodity as a commodity for the transportation of which a certificate may be issued to an applicant who is otherwise qualified, without further findings under Subsection 290(2)."

It is pursuant to the above provision that the present hearings were held.

Of course, the constitutional power to regulate extra-provincial transport undertakings lies with the federal government; this Board is delegated that power under the Motor Vehicle Transport Act, Subsection 3(2) of which states:

"3(2) The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province upon the like terms and conditions and in the like manner as if the extra-provincial undertaking operated in the province were a local undertaking."

As one can see, the power to establish designated commodities is a power to eliminate an essential aspect of economic regulation of the transport of that commodity. It is the power to make the decision that it is no longer necessary to limit the number of competitors transporting the particular commodity; to determine that unrestrained competition in the transport of the commodity will achieve at least as good a result as economic regulation.

Those supporting the proposal, particularly the Canadian Industrial Transportation League, took the position that in the context of the reform program established by the Memorandum of Understanding of February 27, it is up to those who would have competition restricted to justify their position. Accordingly, it was argued an onus should be on those opposing the proposal to demonstrate why it ought not be implemented.

Generally, the carriers opposing the proposal argued that it was wrong for them to be called upon to justify the retention of the existing system. They argued their substantial investment should not be jeopardized when the system has worked well, there has been no public outcry for change, and there is no clear demonstration of the necessity for elimination of economic regulation. In short, it was argued that due to the extreme potential consequences, the Board should be satisfied beyond doubt that it has sound reason for implementing its proposal, for each particular commodity.

The Board is of the view that in the context of legislation under which it is directed to administer a system of economic regulation, it ought not to proceed to eliminate entirely economic regulation, in stages or otherwise, through use of the power given in Subsection 289(1). For the Board to call upon supporters of the system to justify its continued retention in respect of large numbers of classes of commodities is to question the fundamental policy decision of the Legislature to accept the principle that competition ought to be limited in the public interest and thus to establish economic regulation. As a matter of principle, a decision of the Legislature to impose economic regulation should be reversed by a decision of the legislature. In the opinion of the Board, it is not mandated by Subsection 289(1) to determine the need for its existence. Accordingly, the Board accepts that the onus of proof is on those supporting the proposal; the Board will only designate a particular commodity after it is satisfied by evidence, argument, and its own consideration of the matter that it ought to do so, with reference to the criteria discussed below.

The Board recognizes such a position may be interpreted as contrary to the spirit of the Memorandum of Understanding, which was signed by Manitoba's Minister of Highways and Transportation. Accordingly, the nature of this document and the reference to which the Board may have to it ought to be considered.

The document evidences an agreement between the Transport Ministers of Canada, Yukon, Northwest Territorities and the ten provinces (comprising the Council of Ministers responsible for Transportation and Highway Safety), on behalf of their respective governments, to implement certain reforms, including "extending the list of commodities which may be transported without proof of public convenience and necessity". The signatories recognize this may require amendments to the laws of their respective jurisdictions in the preamble to the Agreement.

Obviously, the Council of Ministers is not a body with any law making power. The signatories to the Agreement can not "commit" their respective legislatures or regulatory tribunals, set up under Provincial legislation, to anything. Accordingly, the document has no legal power; it is solely a political document, which indicates the signatories and their respective governments will not make political objections to the stated reforms and will proceed to make reasonable efforts to achieve legislative sanction therefore. It is "enforceable" only by the desire inherent in any government to maintain its good will, and thereby continue to be able to rely upon the commitments given in every other of such agreements.

The preamble also recites that nothing in the Agreement is intended to "inhibit a province from regulating the movement of goods by truck from place to place within a province in a manner consistent with provincial policy". Should a province wish to not alter its intra-provincial regulatory policy, consistent with this term of the agreement, it is not in a position, due to constitutional limitations, to effect a legislated change in extra-provincial regulation. In such circumstances, the provincial government can not be obliged by the agreement to present to its legislature amendments to fulfill the agreement; rather, the burden must fall upon the federal government to amend its laws. At this stage, the silence of the Manitoba Legislature indicates to the Board that no fundamental change in the system of entry control for intra-provincial trucking is desired at this time. Without statutory direction from Parliament to the contrary, the Board in its role as an administrative tribunal, is in a position where it can do nothing but accept the premise of the existing provincial legislation, i.e. that competition is to be limited in the public interest. Thus, the Board ought not to proceed on the basis that unrestrained competition will best serve the public interest unless the contrary is demonstrated.

In short, the Memorandum of Understanding can be cited to place the proceedings in proper context, but can not be relied upon by the Board as a basis upon which to justify implementation of the proposal before it.

IV. CONCERNS EXPRESSED REGARDING ECONOMIC REGULATION

A. Operational Efficiency and the "Backhaul Problem".

Dr. Dawson in his submission on behalf of the Director of Investigation and Research, appointed under the Combines Investigation Act, provided a detailed argument to demonstrate that the trucking industry in Alberta, where no entry control is exercised, is significantly more efficient than in regulated Manitoba and Saskatchewan. Proceeding on the assumption that truckloads are more efficient than less than truckloads, Dr. Dawson cited statistics which indicated that Alberta has a greater percentage of truckload movements than either Saskatchewan or Manitoba. Furthermore, Dr. Dawson cited statistics to indicate that the relative market share held by the trucking mode as opposed to that of the railway is greater in Alberta, indicating a more efficient trucking industry in Alberta than in Manitoba and Saskatchewan. He concludes:

> "The conclusion to the above analysis is: the jurisdiction with the history of greater ease of entry shows clear indications of not only a greater proportion of traffic moving by truck as opposed to rail but also of consistently higher efficiency within its own trucking industry as opposed to others in more entry regulated environments."

In the opinion of the Board, there may be structural differences in the transport markets in Alberta which explain the greater percentage of truckload movements, such as differing commodity mixes, a greater population density and a more productive economy at the time these statistics were gathered. Indeed, according to Transport Canada Statistics published in 1980, intra-Alberta shipments over 10,000 pounds comprised 71.8% of the market, whereas in Manitoba they comprised only 57.8%. This indicates to the Board that in Alberta there are simply proportionately more shippers able to ship in truckload volumes than in Manitoba, due to the nature of the economy and not the efficiency of the highway transport system. In fact, there is some evidence that Alberta has a less efficient industry. According to the Transport Canada Western Canada Truck-Origin-Destination Survey 1978, the payload to capacity ratio was significantly lower in Alberta than in the other western provinces indicating a higher percentage of empty capacity.

Without evidence as to the extent of the rail infrastructure in Alberta as compared to Saskatchewan and Manitoba, it is difficult to conclude anything regarding the relative efficiency of each province's trucking industry. It may be that there exists in Manitoba a greater rail infrastructure for historical reasons, the abandonment of which for political reasons has been opposed. With greater accessability and historical use, the rail mode is more likely to be utilized. As well, Manitoba, with its significant northern mining industry may have a greater volume of more heavy, low value commodities moving relatively long distances, which are better suited to rail transport. Further, Manitoba has the northern port of Churchill to which moves substantial volumes of freight by rail, as it is inaccessable by road.

Thus, although there is a significant area of competition between the rail and truck modes, they do not compete "head-on" in every market. Some commodities and distances are more efficiently transported by rail, some areas are inaccessable by one mode. Without studying the commodity-distance mix in Manitoba's transport market as a whole, and its transport infrastructure, to discover whether substantial differences from that in Alberta exist, one is not in a position to comment on the relative efficiency of the Manitoba trucking industry.

Dr. Dawson responds to these arguments as follows:

> "No doubt some will argue that there may be other reasons for this result that have little or nothing to do with the relative degree of competition in the market. For example, one may advance that the distance shipped or industry product mix of shipments dictate relatively fewer ideal T.L. lots in Saskatchewan and Manitoba. Even if that is so, it does not refute the inference made here that less entry regulation is associated with greater market shares and greater technical efficiency.
>
> Indeed, the pattern of greater efficiency in Alberta is so robust for all commodity groups and all the regional and Canadian comparisons that it seems that only a major structural difference could evoke these differences. But that does not mean that differences in structural factors, such as distance and commodity mix, are not in themselves influenced by transport policy in the long run. Where ease of entry in the trucking industry results in lower transport costs and a greater choice of service, shippers and receivers are able to locate closer to resource base areas, thus increasing both short haul and long distance freight movements to final markets. This shift in location, over time, will result in T.L. ideal lots taking a greater share of total freight. Therefore, the mere existence of structural differences in provincial economies does not constitute a satisfactory challenge to the main conclusion of this Section."

The observations of Lord and Shaw made in their 1980 study of the Ontario and Alberta trucking industries are hard to reconcile with Dr. Dawson's view:

"We saw the impact of the high uncertainty in the Alberta market. The Alberta carriers had configured their operations and operating policies to create variable costs. Mainhaul power fleets were often provided by brokers. Terminals were often shared between several carriers. And, perhaps most significantly, the Alberta carriers were for sale. Almost every carrier we talked to in Alberta implied or stated that his firm could be acquired. In Ontario the firms were not for sale. The Ontario firms were family owned with every intention of continued family involvement.

Attempts by the Alberta carriers to operate in a manner which allows for ready adjustment of operations to volume shifts is appropriate to the potential volatility of the Alberta market place. The issue is are these policies good for the shipper?

Answers to this question are difficult to establish, but several impressions were established during the study. The Alberta motor carrier industry is volatile. Carriers do come and go. Potentially this volatility works against the shipper/consignee since a reliable means of transportation or distribution can not be assured. More significantly, carrier failure (as we observed in eastern Alberta) may leave communities without freight service for indeterminate periods of time.

Secondly, the Alberta carriers do not do 'pedal runs'. All of the Alberta carriers interline freight for communities surrounding their terminals with small (one truck) local operators. This interlining potentially adds to the possibility of additional damage and to service delays.

Finally, the openness of the Alberta market seems to have exacerbated the problems of backhauls. One result may be higher front haul charges to the Alberta shipper.

In general, our impression is that Alberta carriers operate differently than the Ontario carriers, but it is extremely difficult to clearly relate these operating differences to the regulatory structure in Ontario. More importantly there appears to be no clear advantage for the Alberta shipper in the fact that Alberta intra provincial motor carriers are unregulated. In small communities the Alberta shipper lacks direct inter-city service. He appears to face substantially greater uncertainty over the continued existence of his carrier, or of a particular service being continued. And, it appears he may face higher rates, at least for general freight movements."

Furthermore, in Manitoba's case at least, the difference may be the result of an active policy of the Transport Board to protect rural general freight carriers, who are under an obligation to provide a regular service irrespective of volumes, thereby enhancing the level of service to the small rural communities which they serve. In other words, in return for giving up some operational efficiency, rural Manitoba receives more regular and reliable service than might otherwise prevail, resulting in external benefits to the communities which could not be gained without intervention into the market.

A large number of submissions argued that the restrictiveness of operating authorities imposed operational inefficiencies on carriers, through imposing a greater percentage of miles travelled with unused capacity than would prevail in a free access market. It is quite effectively argued that a regulatory body is incapable of keeping abreast of the myriad of shifts in transport demand which constantly occur in a growing economy. Trucking companies need the freedom to adapt rapidly to changing needs in the market place and their flexibility and adaptability is impaired by their operating authorities. Commodity and route restrictions prevent capacity from being transferred in a timely manner from one market to another in response to changes in market conditions.

Supporters of entry control generally take the view that in fact the system compels a reasonable balance of traffic between headhaul and backhaul and results in a more efficient industry as a whole. In their view, easing of entry requirements will only shift the backhaul problem from one carrier to another, with no net change in the industry's efficiency. As stated by Reimer Express Lines Ltd.:

> "Backhaul is simply a situation where there is less freight moving in one direction than in the opposite direction. In Canada traditionally the headhaul is from Ontario/Quebec to Western Canada with a backhaul situation prevailing from the Prairies to Ontario & Quebec because of the lack of freight to balance the headhaul. Adding more carriers will not change the backhaul/headhaul relationship. What may happen is that some existing carriers may have their backhaul taken away which will increase the cost of transporting the headhaul, and some of the new entrants to the market carrying the backhaul will now find themselves without a headhaul so they have to seek authority to be able to transport commodities in a headhaul direction as well. The whole headhaul/backhaul situation will not change by injecting a large number of new carriers into the marketplace. To do so, may, in fact result in a much greater problem."

The Consumer's Association of Canada, in its submission, responds to this type of argument as follows:

> "We note that an error in logic occurs when it is argued that a new entrant will increase unutilized backhaul capacity to the public's detriment. To the extent that the new carrier displaces existing carriers, backhaul capacity is not increased. To the extent that a new carrier and the existing carriers co-exist on a route, this is indicative that there is demand for the services of both. Economically, the capacity committed is what the shippers demand and is in aggregate the same whether supplied by one, two, or several carriers. One effect of competition in this case may be the reduction in tariffs, stimulation of volume of freight, and increase in total employment by carriers."

In response to the argument of the Consumer's Association of Canada, and in further explanation of the "greater problem" referred to by Reimer Express Lines Ltd., the Board provides the following analysis.

In a transport market where the derived demand for trucking services is significantly lower in one direction than the other (such as the Canadian east-west market), there will inevitably be excess capacity available in the direction of the lower demand - the "backhaul" direction. Depending on the degree of difference in the two demands, prices on the backhaul could be driven down toward zero in a competitive market. The greater the difference in demand, the greater difficulty there is in estimating the probability of obtaining a return haul and thus what rate ought to be charged on the headhaul to cover the costs of the joint product. It is conceivable that unrestrained entry may allow a large number of carriers into the market who may be inclined to overestimate the probability of obtaining a backhaul, and thus charge lower prices for the headhaul than is necessary to retain general industry viability. Operating authorities, by limiting the number of competitors and the categories of backhaul, increase the probability compensatory rates are charged and thus stabilize the industry.

As well, there are managerial efficiencies which result from the increased certainty and stability of operating environment provided by regulation. Management is better able to know the market to be served by the carrier in the future, and thus can make more precise investment decisions. Investment in new equipment may be more securely made. Diseconomies involved in having to shift from market to market, such as having to dispose of equipment at low prices, and substantial non-productive promotional expenses can be avoided in a stable regulated environment.

The Board has gone to this extent to respond to assertions of inefficiency in the regulated highway transport industry not to establish as a fact that such assertions are false, but rather to demonstrate that the question is much more complex than as presented at the hearings and that the value one places on industry stability, and continuity and regularity of service is relevant to the question. Even if the system imposes inefficiency, the Board is of the view that it is up to legislators, properly advised, to assess its costs against the benefits of regulation and make the political decision as to the future of economic regulation. The Board should not point to the operational inefficiencies and conclude a long list of commodities should be designated.

B. The costs and delays imposed by the Application and Hearing Process

In order to determine whether in fact there is an insufficiency of service or that public convenience would be promoted by the establishment of a proposed service, the Board must make an enquiry. This enquiry, in the form of an adversarial hearing between the applicant for authority and respondent carriers who hold authority by its nature involves a significant amount of time and expense; and the broader the scope of the application, the more support witnesses required, the more respondents file opposition and the more time and expense necessary.

The lack of sufficient resources committed to the application and hearing process, in terms of Board Members, hearing rooms and staff, has at times resulted in delays of up to a year or more in the granting of operating authority from this Board.

This Application and Hearing process can be very expensive. Its cost for the industry as a whole has been estimated at $50 million per annum (Hirshhorn 1981) (under 1% of the $6 Billion annual operating revenues of the for-hire industry). Furthermore, operating a trucking company within the regulatory system involves the development of a great deal of expertise and management time commitment merely to cope with the regulation. These costs must ultimately be borne by the shipping public.

Carriers supporting the proposal complain that they have had to forfeit work due to costs, time and legal impediments involved in obtaining operating authority, even in emergency situations. Shippers complain that delays in applications for approval disrupt service provided to them and that the regulated system cannot respond quickly enough to their needs. Supporters of the proposal argue that only unfettered competition can ensure a responsive industry.

Carriers with limited authorities complain that shippers are reluctant to support applications as they are harassed by opposing lawyers or do not wish to risk destabilizing their relationship with established carriers. They further complain that obtaining single trip permits or temporary authorities requires contacting other carriers to determine that they are unavailable; they are often difficult to contact quickly, particularly during off hours.

Extra-provincially, a carrier is required to obtain authority from as many provinces as he plans to travel into or through. This regularly involves a multitude of hearings before up to twelve regulatory tribunals. Although there is provision for joint hearings, there are practical limitations to the number of witnesses that can be called in such hearings which may jeopardize the granting of the application in full.

These costs must be included in any cost/benefit analysis of regulation by the government; but the Board is not prepared to assume the role of the government and consider the cost of the process as a factor in support of the proposal.

C. The Lack of Effective Enforcement

There are many who believe that the failure to commit sufficient resources to enforce the system has made it entirely ineffective and redundant in any event, particularly in the truckload sector. A number of enforcement problems have existed for many years. Sham leasing and buy-sell arrangements are common and virtually impossible to effectively detect and eliminate. It is perceived by many that a carrier who intends to transport illegally will have little difficulty in avoiding detection. Windmill Transport Ltd. complains:

> "It is difficult to believe that an effective system of regulation exists...when the government virtually admits it is incapable of enforcing its regulations."

This is a valid concern. It is arguable that by their lack of committment of resources to enforcement, governments are making a policy decision in respect of the value of continuing economic regulation.

D. The Failure to Control Capacity and the use of Owner-Operators

One of the goals of regulation is to better ensure that transport capacity matches transport demand. None of the provinces participating in the joint hearings actually regulate transport capacity by controlling the number of trucks an authorized carrier may utilize. This fact, together with the fact that an authorized carrier can effectively "lease out" his authority to owner-operators, shifting to them the risks of down time and reductions in demand, it has been argued, seriously undermines the ability of regulation to ensure stability in the industry.

E. Lack of Effective Competition and Protection of Inefficient Operators

Although many carriers indicated that there already is a very high level of competition for extra-provincial traffic, a number of shippers did express concern that there was too little competition both intra and extra-provincially. A number of shippers believe that carriers take advantage of the protection regulation gives them.

An example of anti-competitive behaviour engaged in by the household goods carriers, for which they were convicted under the Combines Investigation Act in 1983, was cited by Dr. Dawson. Regulation was alleged to facilitate such anti-competitive behaviour.

Dr. Dawson also argued that monopoly and oligopoly rents (excess profits) exist, due to regulation, the quantum of which the Board is incapable of determining. In the opinion of the Board, Intra-Manitoba, this is not likely, as rates are only 80% of those in unregulated Alberta (McRae and Prescott 1980); but then to set rates at levels which are too low adversely affects the ability of the carriers to provide adequate service.

Dr. Dawson further argues that the Board has no knowledge of the cost efficiency of a carrier and no way of knowing whether someone could not perform a service more cheaply. In his view the setting of rates cannot be effective in minimizing costs.

On the other hand, it is arguable a diligent regulatory tribunal, with sufficient resources, will make itself aware of the economics of the industry it regulates and refuse cost based rate increases if it finds the carriers fail to adequately keep their costs at a minimum.

Dr. Dawson also argues that a carrier protected from open competition is not subject to any pressure to improve his efficiency; there is an insufficient stimulus for improved performance and innovation. Shippers generally echo this concern arguing that the market mechanism is the best means of recognizing and rewarding productive and efficient operators and ensuring their success.

One carrier in support of the proposal argued that regulation insulates carriers from market conditions to which they must respond to be adaptable.

On the other hand, the Board may respond to any complaints regarding service by authorizing a further carrier and/or revoking the poorly performing carrier's authority. This ever present possibility may place adequate pressure on the carrier not to allow service deterioration, and to watch his costs to better avoid it.

Carriers in opposition generally argue that rates are already as low as possible and that the present system has resulted in excellent service.

In the view of the Board, the economic costs of protection of inefficient carriers and discouragement of innovation must be weighed against perceived benefits of regulation, by governments, not regulatory tribunals. The argument is not relevant to the question at hand - the designation of a limited list of commodities.

F. Failure to Control Extra-Provincial Rates

In any situation where monopolies or oligopolies exist, if companies wish to maximize profits they will provide less service at higher rates than under a purely competitive situation. When there is no regulation, the threat of another entrant into a contestible market, seeking the higher returns observed in the industry, may be sufficient to cause existing operators to provide proper service and not to charge excessive prices. However, entry control eliminates the threat of a new entrant.

As well, in any industry assumed to be subject to destructive competition, rate levels may fall too low to maintain a viable industry.

Accordingly, fundamental to effective regulation is the regulation of rates.

In Canada, only two provinces, Quebec and Newfoundland regulate extra-provincial rates, and these provinces will soon no longer do so pursuant to the Memorandum of Understanding of February 27, 1985.

G. The Lack of Fairness

A number of small trucking companies complained that they have no chance of obtaining enough operating authority to run a viable business; the costs are perceived as simply too high and the chances of success in a broad application too low. New entrants must operate as owner-operators "leasing" authority from regulated carriers at a rate of 25% to 30% of gross revenues.

The view that in a "free society" with a "free market" economy, the government has no place prohibiting a responsible and competent businessman from engaging in a legitimate trade was expressed numerous times at the hearings.

This complaint clearly demonstrates the highly political nature of the question of the future of economic regulation.

H. Adverse Impact on International Trade

In the view of Windmill Transport Ltd.:

> "In the shrinking international community, transportation is increasingly viewed as a commodity - one which will often determine sources of supply and potential markets for our products. Canada's success in international markets, and Manitoba's potential within Canada will only be fully realized if all sectors of the transportation industry, encouraged by all levels of government, seek out the most efficient, the most innovative and the most responsive system possible. In that way we can ensure not only our own secure and productive future, but that of all other sectors of the economy as well.
>
> Such efficiency, innovation and responsiveness are not promoted through entry regulations and it is our submission such regulations should quickly be eased or removed completely."

Dr. Dawson pointed out that transport deregulation in the United States has resulted in substantially lower rates for U.S. movements, placing Canadian shippers to the U.S. market at a significant competitive disadvantage, and accordingly, lowering the level of international trade.

V. THE ROLE OF THE ECONOMIST

Two economists made submissions to the Boards.

Dr. D. Dawson, on behalf of the Director of Investigation and Research appointed under the Combines Investigation Act, submitted a very extensive submission disputing the economic rationale for economic regulation of trucking and appeared before the joint Panel in Winnipeg to give further explanation. The Consumers Association of Canada filed a submission prepared by Professor G. B. Reschenthaler, who appeared in Saskatoon prepared to elaborate upon his views.

As stated above, the Board is of the view that it ought to leave the fundamental question of whether to continue economic regulation up to the Legislature and the Parliament of Canada. However, it is incumbent upon the Board to make some exposition of the economic arguments relevant to the question and respond to the submissions received, to assist in the development of criteria to identify candidates for designation, to achieve a greater public understanding of the issues, and to better fulfill its advisory role.

Prior to analyzing economic considerations, one should clearly define the role of the economist as a policy adviser.

In his submission, Dr. Dawson cited the authoritative text of Alfred E. Kahn, The Economics of Regulation. In that text, in Volume 1, at page 14, the author states:

> "What policy ought to be is a topic about which the politician and political scientist, sociologist, philosopher and clergyman, and indeed, in a democracy, anyone who votes has important and relevant things to say. Public economic policies are not, cannot and should not be framed on the basis of "purely economic" considerations alone. Economic institutions and policies are in the last analysis only means to ultimately non-economic ends - such ends as a good life, justice, the full development of the potentialities of the individual, national strength, or the glory of God. They can therefore be formulated and judged only in terms of some conception of the proper definition and weight to be placed on these various non-economic goals."

James E. Foran, in his oral submission to the Board, eloquently argued the limitations of economic analysis as follows:

> "The economist is indifferent as to whether the market permits three, fifty or five hundred carriers. He is indifferent as to whether there are small, medium sized or large carriers in the marketplace. He is indifferent as to the locations of those carriers or their nationality. He is indifferent to exit from the marketplace and the reasons for that exit. These are all matters, Mr. Chairman and Members of the Boards, that have grave, social or political ramifications. A market competition approach makes no distinction between urban centres or rural communities, locational considerations or population spread and density. ... Is (a change resulting from open competition) feasible for smaller, rural

communities? Does it have an adverse impact on hours of work? Safety or convenience of service? Is it socially or politically desirable that Canadian investment in the trucking industry receive some element of protection through regulation just as Canadian manufacturers receive protection through high tariffs, import quotas or anti-dumping legislation? Is it socially and politically desirable that Canadian jobs in the transportation industry be protected? Is it socially and politically desirable that there be a mix of large, medium and small carriers regionally represented in the Canadian trucking industry?... Is it desirable that direct subsidies be paid to particular groups or particular locations rather than a long established system of cross-subsidization... this is clearly a major policy decision to be made by the Governments involved."

VI. ECONOMIES OF SCALE AND MARKET DOMINANCE

Where due to the nature of the cost structure of the industry, service is most efficiently provided by a very limited number of suppliers, it has historically been argued regulation is necessary to appropriately limit the number of competitors and protect the public from abuses of monopoly or oligopoly power.

Where an industry is characterized by an inherent tendency to decreasing unit costs as production increases, economies of scale exist. Where economies of scale continue throughout the entire extent of the market, production in that market will be most economically efficient if conducted by a single firm: The industry is a "natural monopoly". Where economies of scale are great, an industry may be most efficient if production is concentrated in the hands of a few firms. The industry will tend to be oligopolistic.

Professor Reschenthaler in his submission, summarily dismisses this as a rationale for economic regulation of the trucking industry. He states:

> "There is no natural monopoly in this industry. Economies of scale are not significant."

Dr. Dawson provides a more detailed argument and it is beneficial to quote it in its entirety (pp. 13 - 14):

> "The next criterion to be considered is whether the cost structure of the industry is supportive of effective competition. At one extreme, natural monopoly is a condition where production is achieved most efficiently by a single firm. It has been traditionally claimed that economic regulation is justified here because competition will not be an effective means of controlling the exercise of abusive market power. The usual source giving rise to natural monopoly or a tendency towards high seller concentration (a small number of sellers with large market shares) is the presence of economies of scale. Without entering into a discussion of the empirical studies testing the existence of economies of scale in the trucking industry, suffice it to say that the evidence is mixed (Hishhorn, pp. 39-45). For our purposes, the significance lies in the extent of the economies relative to the size of the relevant market; the larger the market and the greater the number of firms of minimum efficient scale that can be accommodated, the less concern there need be about high levels of concentration. To the extent that the ease of entry initiative opens up broad regional markets, I expect that there will be little need for concern about a small number of carriers becoming dominant and eliminating effective competition."

The Board acknowledges that economies of scale in the truckload sector are not sufficiently extensive to raise concerns regarding market domination. In fact, "smallness" may have some inherent advantages in truckload markets.

However, the Board is of the view that in any discussion of economies of scale in trucking one must make a clear distinction between less-than-truckload (L.T.L.) and truckload service. These are two distinct markets with different costs; L.T.L. service requires terminals; greater handling time; more employees; pick-up and delivery service and greater administration expenses. Economies of scale are necessarily greater for the L.T.L. market than the truckload market.

As well as failing to make any distinction between the cost differences of truckload and L.T.L. service, the two economists ignored the work of Wang Chiang and Friedlaender (1984) which pointed out previous studies failed to consider the effect of network characteristics when estimating cost functions for the L.T.L. trucking industry. Their study concluded:

"In general, these economies of network configuration and of network operation do much to explain why large carriers may enjoy a natural advantage over small carriers, since they are able to exploit fully the economies of equipment utilization and traffic flows over the network. In addition, since surveys show that shippers prefer to deal with as few carriers as possible to reduce the chance of loss, delay, or damage from additional handling, a large carrier that operates nationwide with its own fleet has a significant advantage over a small competitor, which must interline with others to offer service on a national level.

In conclusion then, it appears clear that the way in which trucking firms operate over their networks not only has a significant impact upon costs, but also does much to explain the desire of firms to merge and to grow larger. Increased connectivity (which is made possible by increased route authorities) implies an ability to perform more direct routing and more balanced service and thus leads to cost reduction. It also permits carriers to provide direct service and thus places them at an advantage vis a vis their competitors who may have to interline and thus provide slower service. This explains why firms attempted to expand through mergers during the period when regulatory restrictions severely limited the granting of new authorities and why there was a marked increase in filings for new route authorities when regulatory restrictions were eased in 1980.

By its very nature, trucking is a spatially dispersed activity, which utilizes the available network in a various number of ways. Since the way in which a firm utilizes the available network has a significant impact upon its costs, it is clear that if policymakers are to have a full understanding of size-related economies in the trucking industry they must also have a full understanding of the relationships between size and network effects. In particular, the findings of this paper indicate that there are substantial cost advantages associated with a high degree of network connectivity and traffic density, which permit direct routing and more concentrated traffic flows. Thus the evidence of this paper suggests that to understand the nature of trucking costs fully one not only needs to consider the disaggregated output vector, but also to consider the role of network configuration and operation."

Thus, concerns regarding market concentration and abuse of market power may be valid. The tendency toward greater concentration in the L.T.L. market in the U.S. since deregulation and the dominance of the Australian L.T.L. market by two carriers can be explained.

The size of the market covered by a carrier has significant implications for the type of service provided. If L.T.L. service were deregulated, the thinness of the Manitoba market may result in too great a "distance" between the carrier and the communities it serves, than is politically and socially acceptable. This may have implications for service frequency, time and convenience of service, availability for urgent service, ability to properly deal with claims, responsiveness to the needs of the community, local economy contributions by the carrier, and so on. Through economic regulation, the Board has historically enforced a policy of ensuring small rural communities are provided with dedicated, personalized L.T.L. service, by a small carrier able to locate in or near the communities being served.

Furthermore, assuming a "minimum efficient scale" exists, whether more than one or two carriers of minimum efficient scale can be accommodated within a market will depend on how one defines the extent of the market. Many communities in rural Manitoba, particularly in the north, are geographically isolated, and arguably may not be feasibly integrated into a broader, regional market. If the remote market is small, concerns about market concentration and abuse of market power are valid.

It is also arguable that due to extensive economies of scale in the rail mode, unfettered competition from highway transport will not allow railways to price high enough to cover their long run average costs, and thus a misallocation of resources between the two modes will result. This may be of particular concern in remote areas where the external benefits of rail service availability may be of greater significance. The Board is of the view such an argument was a factor in the introduction of highway transport regulation, and the interests of the railways should not be simply scoffed at. It is legitimate to consider as a matter of policy (as inadvisable as one might think it to be) that prices for trucking services should be kept higher than marginal cost to maintain rail demand at a level which allows proper maintenance of rail infrastructure, as opposed to providing direct subsidies to the rail mode to do so.

As well, the Board is of the view that economies of scale are not the only mechanism by which a market can become concentrated. Long run diminishing costs is only one mechanism by which a company can be placed in a position where it may exercise market power contrary to the public interest. As discussed below, market concentration can result from a chronically unstable industry subject to destructive competition.

VII. DESTRUCTIVE COMPETITION

Another major justification for economic regulation is to prevent destructive competition. When due to the nature of the market, competition is "destructive", a chronically unstable industry results. Due to bankruptcies and general lack of financial health, service may become unreliable, unpredictable, and of poor quality.

The Board is of the view it was the perceived destructive competition prevailing in the early days of the industry that was the prime motivating factor behind the establishment of economic regulation of trucking.

Competition is "destructive" when market circumstances result in prices being lower than average total costs for extended periods of time. Destructive competition occurs when excess capacity exists in an industry together with inelasticity of supply. In other words, when excess capacity occurs, and the nature of the industry is such that supply is not reduced in response, for an extended period, then a large number of firms in the industry will fail to cover their total costs from the low prices prevailing. The extent of the "destruction" inflicted will depend upon the volume of excess capacity and the length of time it persists.

The destructive competition rationale is summarily dismissed by both the economists who filed submissions with the Board. Professor Reschenthaler simply states at p. 7:

> "Destructive competition is not a problem since fixed costs are small proportion of total costs and barriers to entry and exit are low."

Dr. Dawson states at p.14-15:

> "The final factor to be considered is whether the trucking industry is inherently unstable, that is subject to "ruinous" or "destructive" competition. This refers to great instability of prices and carriers' incomes, and loss of service due to bankruptcy as firms are forced to operate below costs for extended periods of time. In his authoritative text, the Economics of Regulation, Kahn examines in detail the application of the theory of destructive competition to the trucking industry and concludes that:
>
> > "It would be difficult to find (an industry) less qualified" (Kahn, Vol. II, pp. 178-193).
>
> This finding is supported by Hishhorn (pp.33-39).

The Board considers it unfortunate that the economists did not consider it necessary to provide any detailed argument on the subject, leaving it for the Boards, not one member of which is an economist, to provide balance to the arguments.

The Board has considered the pages of the Kahn text relied upon by Dr. Dawson, and finds, firstly, that it is not merely situations in which fixed costs are a large proportion of total costs that destructive competition may result, and, secondly, that Kahn has made some false assumptions in his analysis.

Destructive competition may occur not only when there is inelasticity of supply of capital (i.e. a high proportion of fixed costs), but also when there is a high inelasticity of supply of labour.

Thus, for trucking, although it is true that capacity can be increased or decreased in relatively small increments if one merely considers the vehicles themselves, when one considers the economic position and psychology of the individual trucker, capacity may not in fact be reduced for an extended period of time in response to a reduction in demand.

Kahn recognizes this, and demonstrates how the phenomenon occurred during the great depression of the 1930's. It is very enlightening to quote Kahn extensively on this point (p. 180-182):

"How, then, could (competition) have been (ruinous) in 1935? There are at least two ways of explaining. First, the mere fact that variable costs are a high proportion of the total does not necessarily protect an industry against the severe compression of prices and incomes characteristic of destructive competition. Variable costs put a stable floor under prices only if that floor is itself immobile. Suppose, however, that the principal component of those variable costs is the industry's wage bill; and suppose that the workers hired by the industry have no possibility of alternative employment, so that the supply of labor to the industry is completely inelastic on the downside within a wide range. The result will be that the burden of competition will be transmitted directly to wage rates; decreases in final product demand will result in the derived demand for labor moving vertically downward along the rigid labor supply curve, with the industry's depression in this case being transmitted directly into declining wages. The long-extended downward wage-price spiral, with its accompanying labor unrest, a typical feature of destructive competition, thus finds its explanation in the inelasticity of the industry's labor supply.

...

Second, a very large percentage of the economic cost of providing trucking service in those early days of the industry consisted in the return for the labor of the owner-operator, exactly as in the case of the family farm. The return on that labor, like the return on the investment in the truck itself, was a residual; it could be high if the industry was prosperous and could be compressed indefinitely, as long as the owners had no alternative employment, if the industry were depressed. During the Depression, these men had no alternative employment to which to turn; so the supply of their labor to this industry was, once again, completely inelastic.

...

So the supply of the major inputs into the trucking industry was during the early 1930's either inelastic or even negatively elastic - with decreases in demand being either accompanied by or actually inducing an expansion in the quantity of service offered. This tended to produce the same inelasticity of supply as is imparted in other industries subject to destructive competition by a heavy investment in fixed capital.

...

These depressing and destabilizing influences have become greatly attenuated since 1935 and would surely have done so without regulation. The capital investment required to enter the industry, while still low, has increased markedly. Although economies of scale in trucking are comparatively slight, still

> "the extremely small firm with the owner, his brother-in- law, and son can no longer compete with the twenty-man firm."

Full employment in the economy generally has cut off the large and inelastic supply of labor to the industry. The workers have organized into a powerful union, which has the effect not only of raising wages but of making the labor supply completely elastic at the established wage level, thereby eliminating the downward compressibility of the most important component of the variable cost floor under price."

In the opinion of the Board, there are five assumptions that Kahn has made which are questionable. Firstly, in Canada at least, we have no where near full employment. In a recessionary period, the vast majority of truck drivers would have no alternate employment. Secondly, one can presently very easily buy a vehicle for 10% down and some operators are known to borrow the down payment. Entry is still very easy. Thirdly, the trucking industry today <u>is</u> in fact largely made up of many extremely small firms - the owner-operators. Although the owner-operator may contract with another carrier, when that carrier seeks to reduce his capacity, without regulation, there is nothing to stop the owner-operator from under-cutting the rates of his former "employer" and seeking the same customers he had before he was let go. The owner-operator may also contract with a freight broker on a percentage of revenue basis, which can result in very low rates, as the broker is indifferent to truck operators' costs (he gets his percentage regardless of the rate).

Fourthly, deregulation and the increased number of small operators will certainly undermine the power of trucking unions; the experience in the United States demonstrates that trucking wages have fallen greatly in consequence of deregulation. As competition increases, even more owner-operators will be utilized, and union bargaining power could not be relied upon to stabilize the industry. Fifthly, the ignorance and exaggerated ideas of possible profits that existed during the great depression remain in the minds of many "independent truckers" today. Trucking, for psychological reasons, remains unusually seductive in its appeal to new entrants, who may not have the capacity to properly assess their costs.

Accordingly, the Board is of the view that during an economic recession or a depression, as the derived demand for trucking services falls off significantly, there is the potential for serious destructive competition. There is a reasonable probability that large numbers of individual owner-operators will prefer to continue operating at below cost rather than face unemployment (with or without unemployment insurance) and lose the equity they have built up in "fire sales" or seizures of their vehicles. By continuing to operate at below average total costs, the owner-operator will live off his "savings", in the form of equity in his vehicle, and as time passes he will be living off the depreciation of the vehicle. He will not make sufficient returns to allow the replacement of his vehicle, but he will be able to feed, cloth and shelter his family through some level of return for his labour. Industry capacity will remain in excess for a significant period; the average life of a vehicle is 7 years. Responsible companies who wish to properly maintain their fleets and replace vehicles when they are worn out will not be in a position to compete.

During a recessionary period accompanied by destructive competition, it is not merely the inefficient operators that may be weeded out. Many efficient carriers with shallow pockets may be eliminated as well. The companies most likely to survive will not necessarily be efficient, but rather will be very large and highly capitalized with low debt to equity ratios. Thus, a period of destructive competition may lead ultimately to greater concentration in the industry; it is the big companies that survive the storm. With greater concentration comes a greater degree of imperfect competition, and a greater potential for abuse of market power.

This may further explain why the market share of the largest U.S. carriers increased substantially after deregulation.

Motor carrier bankruptcy in the United States was recently studied by Chow and Gritta (1984), who concluded:

> "The motor carrier industry enjoyed sustained traffic growth and stable regulatory environment through most of the 1970's. Relaxation of regulation by the ICC in 1977 was followed by total deregulation upon the enactment of the Motor Carrier Act of 1980. Meanwhile, traffic growth has slowed and even declined since 1979. Motor carriers have been thrust into a new and uncertain environment to which they must adapt.

Many motor carriers have been unable to deal with these changes and have gone out of business. This paper has summarized the financial position of the general freight motor carrier in 1982 relative to the financial position in 1976. An overall deterioration in the financial position of this carrier group was observed, but it was the smaller Class II carriers that suffered the most. This was evident in both the industry and the panel samples. The smaller carriers incurred relatively large losses compared to their larger counterparts and have been unable to sustain an adequate liquidity position. We are thus led to conclude that there are benefits to being large.

We also observed that reduced profitability was due in large part to sustained price competition reflected in discounting and lower rates. There is little doubt that this would have been minimized if the ICC had maintained strict control of rate competition and entry into the industry as in previous years. If deregulation means increased competition, the natural result is increased turnover via bankruptcy of competitors. Competition is, by its very nature, destructive. It is the responsibility of transportation policymakers to decide whether the current level of instability and the industry's financial position are acceptable prices to pay for the lower rates offered to the public."

Those opposing the proposal have in non-economic terms expressed their concerns over the possibility of destructive competition if entry control is eliminated entirely. Whitemouth Transfer is convinced that truckers would cut the rate when the work is slow and leave when a better offer comes along, leaving the shipper with inconsistent service, yet demanding low rates. Leed's Enterprises Ltd. argues that ease of entry will result in chronic excess capacity, excessive competition and an unviable industry. The Canadian Bankers Association, in a brief filed with the Ontario Highway Transport Board and filed with the Panel by a carrier, argues that without the protection of operating authorities, the industry is less stable and accordingly the bankers would provide more careful scrutiny of their loans to the trucking companies, likely reducing lines of credit. The Teamsters Union argues that under an ease of entry system, anyone could buy a second hand truck, skim off the cream when conditions were favourable and when unfavourable engage in irresponsible competition and ultimately withdraw leaving original operators financially ruined.

VIII. PRICE DISCRIMINATION, CROSS-SUBSIDIZATION AND SERVICE TO SMALL COMMUNITIES.

These topics are very much inter-related; in the context of motor carrier regulation, one cannot be discussed without discussing the other.

Historically, one of the goals of trucking regulation has been said to be the prevention of excessive price discrimination.

Price discrimination occurs when a different price is charged by a firm for a good or service when no difference in cost exists; when a seller is able to charge "what the market will bear".

In trucking, particularly in the L.T.L. sector, as in many industries, a significant proportion of the total cost of production is made up of "common costs", which cannot be specifically attributed to the production of any particular service. Administrative and terminal costs are for the most part fixed and will not vary through a broad range of output and over a long period of time. Vehicle costs may be considered variable, depending on the time frame considered; but if in L.T.L. service excess capacity exists, the cost of that excess capacity must be considered a common cost which cannot be fairly allocated to any particular shipment.

Trucking operations serve different markets at the same time - different shippers, commodities and locations. If in one market, the carrier faces much competition, particularly in times of falling demand, in order to maintain its market share, the carrier may be forced to charge a price which, although covering the variable cost of providing the service (and thus does not "lose money" for the carrier), fails to make a "reasonable" contribution to the carrier's common costs.

The carrier then has to make a greater proportion of the common costs on his other service, wherever and whenever he can. If at the same time the carrier is serving a smaller market in which he is the dominant or the sole carrier, he may be in a position to charge a price for the same service which will make an "unfairly" high contribution to common costs. He will price discriminate between the competitive and the non-competitive markets, taking advantage of the differing elasticities of demand.

As well, a carrier may serve a market where there is a dominant purchaser of transportation services. In order to efficiently utilize existing capacity, the traffic of the dominant purchaser may be essential to the carrier; and the purchaser may be able to readily resort to private carriage. The dominant purchaser may thus be in a position where he can command a price which does not make an appropriate contribution to the common costs of the carrier. Again, the carrier is in a position where he must price discriminate - charge his less powerful customers with lower elasticity of demand a greater price for the same service in order to recover his common costs in full.

Without price regulation, the degree of this discrimination against small shippers and small communities in less competitive markets may be set at a level which is not socially or politically acceptable. As the Board is mandated to regulate intra-provincial rates, and thus place a ceiling on the level of price discrimination, the Board should be more cautious when considering deregulation of intra-provincial movements.

Thus, the Board disagrees with Dr. Dawson when he states:

> "It is only in situations where shippers are captive to a single carrier and where there is no potential for new entry that there is a valid concern that unfair discrimination may exist unchecked by market forces. In this case, a captive shipper has no alternative and will be forced to pay what the market will bear or accept an inferior level of service. This cannot occur over time where there are no regulatory barriers to entry because carriers will enter the market attracted by excessive prices or inferior service offerings."

In both the above examples, it will be a practical impossibility for a new competitor to enter the market in which price discrimination is occurring.

Many fear elimination of entry control will jeopardize service to small communities. Regulation, it is argued, enforces an obligation to serve small, non-lucrative communities along with more lucrative communities. The returns received from the lucrative communities are greater than normal; these excessive profits subsidize the service to the smaller communities. As well, where rates are prescribed, or a monopoly is imposed, large truckload shippers may pay higher rates in relation to the costs of providing them with service, cross-subsidizing the transport of small shipments (by big or small shippers).

Dr. Dawson cites two studies (Ontario 1983 and Consumer and Corporate Affairs Canada) and Professor Reschenthaler one (Ontario 1983), which conclude that in fact there is no effective enforcement of the common carrier obligation to serve small communities, that there is no evidence a cross-subsidy exists in any event, and that service to small communities will not be adversely affected by deregulation. However, these studies did not specifically consider the Manitoba situation. It is unfortunate the economists did not refer to the available study of the Manitoba situation. The study by McRae and Prescott (1979) was summarized by Hirshhorn (1981) in part as follows:

> "quite contrary to the pattern in Alberta, unit prices in the entry and rate prescribing provinces of Manitoba and Saskatchewan tended to decrease as the population of the destination community declined; this suggests that a program of internal subsidization was in effect within these two provinces.
> ...
>
> There was also evidence of a very low ratio of LTL to TL rates in Saskatchewan, and to a lesser extent in Manitoba, suggesting that favoured treatment was perhaps being provided to the small shippers as well as the small community in these provinces.
> ...
>
> It is significant that in both Manitoba and Saskatchewan cross-subsidization has been pursued as a matter of deliberate policy.
> ...
>
> In Manitoba cross-subsidization is to some extent implicit in the "Single" or "Simplified Price Structure" introduced in 1973."

In Manitoba, the vast majority of our population is concentrated in and very close to Winnipeg. Rural Manitoba is very sparsely populated, with very few communities of any great size. The Board is of the view that L.T.L. service to these communities, due to the distances involved and the thinness of the traffic, would be relatively infrequent or significantly more costly as compared to the present time without some form of subsidy. Regulation presently imposes a form of taxation on large truckload shippers and shippers in larger, less remote communities, in the form of higher than cost rates, (and the Board suspects to some extent on L.T.L. carriers themselves in the form of lower than normal returns in many cases). This subsidy allows more regular L.T.L. service at below actual cost to rural Manitoba.

Contrary to the situation in Ontario as described in their 1983 study, this Board does enforce the common carrier obligation to serve. The Board has on a number of occasions responded to complaints of inadequate service with an investigation and a threat to revoke the entire authority of a carrier if service is not improved. The only situation where enforcement of this obligation breaks down is in relation to the numerous carriers who have no lucrative points in their certificate at all - only small or remote points. These carriers rely on large shipments as the sole source of the cross-subsidy and in the Board's opinion their returns are minimal, barely covering any reasonable return for their labour let alone a return on capital.

Furthermore, subsections 281(1) and 300(4) of The Highway Traffic Act provide a mandate to the Board to require every motor carrier to furnish "adequate", "proper", "convenient", "efficient" and "sufficient" service. In doing so the Board imposes an obligation on L.T.L. general freight carriers to provide all customers with regular service, regardless of volumes and cost. Thus, our L.T.L. carriers bear the cost burden of some level of excess capacity. A "cream-skimmer" without any such "standby" obligation, and thus lower average cost, if permitted to enter the regular carrier's market, will be able to charge a lower rate. Shippers who use the cream-skimmer will be making no contribution to the common cost of the regular carrier's standby capacity, although the standby service is likely of value to the shipper. For example, a wholesale distributing company may use the cream-skimmer for its regular distribution, but when a small local customer's supply of a particular item needs replenishing for some urgent reason, the company will want to use the standby carrier at his usual rate.

Much concern was expressed by and on behalf of Manitoba's intra-provincial "radial" general freight carriers regarding their viability and the level of service to rural Manitoba should the proposal be implemented. Their arguments can be summarized as follows:

Any action taken which is likely to prejudice the financial integrity of the rural general freight carriers would not be in the public interest and in the long run would weaken the rural centres they serve. The radial carrier system provides a vital transportation lifeline to rural Manitoba. The carriers satisfactorily provide regular service irrespective of the volume of freight. Small customers rely on radial carriers for predictable service; it is not economical to provide a scheduled service if local carriers have no assurance they will be transporting the customers' commodities.

The radial carrier is obligated to serve the points named in his certificate; he is required to transport all shipments, regardless of the difficulty or profitability of doing so. He would be at a competitive disadvantage to those who would be able to enter his district and pick and choose their freight. It would destroy the radial carrier to leave him with the common carrier obligation to serve specific districts, yet allow a large percentage of his revenue base to be vulnerable.

Radial carriers require truckloads; any erosion of truckload traffic will necessitate higher rates for the transportation of L.T.L. to the detriment of the competitiveness of local business enterprises. The local carrier creates jobs, investment and adds to the local economy. He provides specialized service and knows the needs of the community. The rural carriers have invested facilities and equipment on the understanding that they would be provided with some degree of protection from unfettered competition.

The Board accepts these as valid concerns. The Board should not proceed to deregulate on purely economic grounds, a large number of commodities transported by Manitoba's radial general freight carriers, allowing "cream-skimmers" to eliminate the cross-subsidy paid by shippers of the designated commodities and eliminate their contribution to the carrier's stand-by capacity, and thereby undermining the ability of the radial carrier to regularly serve his communities. The duty to provide regular service must be removed from the radial carriers before they can fairly compete with designated commodity haulers who have no such burden, or LTL rates must rise substantially. The Government must determine if it is in the public interest to ensure the benefit to the community of regular service, which is external to the market system, should be maintained by direct subsidy rather than internal subsidization.

However, the Board cannot "put its head in the sand", nor should the radial operators.

Small radial carriers can only go for so long with below normal returns.

The system of cross-subsidization may be, in any event, in the long run, inherently unenforceable. The cross-subsidy of small shipments by large has been very much eroded over the years. It admittedly effectively only exists at this point in time where a carrier has exclusive rights in a territory; and even in these circumstances it is inevitably threatened. The elasticity of demand for trucking services is too high for those paying the greatest share of the subsidy, for they have private carriage and rail mode alternatives.

Large, regular shippers who did not want to pay more than what they perceived as a fair price, captive to a carrier, sought approval of contract and specialty carrier applications, and the Board, rightly or wrongly, granted them. Alternatively, they went to private carriage. On a case by case basis, the interests of a shipper seeking approval of a distribution system that better serves his customers are difficult to ignore.

As a result, competition in rates has become an unavoidable and practical reality. Excess profits on lucrative, subsidy paying routes are bound to be eaten away by competition whenever allowed or unpreventable.

It is incumbent upon the Board to make every effort to resolve the dilemma of having to choose between efficient distribution for particular shippers and protection of regular service to small communities, and proposals to do so are being considered. At this point in time, the Board is not prepared to accept that the deregulation of a long list of commodities is the solution, and looks forward to the co-operation and assistance of the radial carrier in the development of alternatives.

IX. THE CANADIAN HIGHWAY TRANSPORT SYSTEM

Canada's transportation system has long been viewed as an instrument for promoting national unity and supporting regional development. Railways, airlines and motor carriers all have contributed to achieve the national goal of forging required transportation links to tie the country in an east/west direction. Motor carrier regulation through restricted entry has to some extent furthered this goal. In the words of Mr. Foran:

> "If Canada's nationhood has been based on economic considerations alone, we would have no nation. Our historical, economic ties are predicated on a north/south basis, not on an east/west basis. For example, the building of the Canadian Pacific Railway was politically motivated, certainly not an economic imperative. Social and political considerations have always outweighed economic considerations in the formulation of our transportation system from the inception of the country."

Mr. Foran went on to quote the Turgeon Royal Commission on Transportation, 1951, as follows:

> "Canada is a country of two areas of civilization separated by a relative economic desert.
>
> ...
>
> It is the existence of this necessary link between Canada's two vast areas that must be recognized. It is called for not only by the requirements of the exchange of goods for commercial purposes but also by those of our national defence structure. The problem presented is that of maintaining this link so long at least as it does not provide sufficient revenue for its own maintainence. The problem concerns the whole country and not only its western portion and the responsibility towards a solution should be assumed by the nation..."

Mr. Foran went on to state that because of the size of the country, its population distribution, and its distinct regions, transportation developments have been principally motivated by political and social considerations, rather than economic considerations and Mr. Foran criticized Dr. Dawson for failing to discuss political and social reasons for imposing regulatory control over entry.

Specific concerns were put forward by Dennis Vincent of Trimac Transportation Services regarding the ability of Canadian based motor carriers to compete in a free access continental market. It was pointed out that any one of the top three American trucking firms themselves transport more freight than all of that transported in Canada. On a continent-wide scale, even the largest Canadian carriers would have to be classified as medium sized, and it was just that category of carrier that suffered most after deregulation in the United States. It was further pointed out that due to customs and immigration restrictions, Canadian based carriers cannot transport from point-to-point in the United States which, due to their location at one end of the continent-wide market, places them at a substantial competitive disadvantage: the Canadian based motor carrier in north/south lanes is likely to have a larger percentage of empty miles than an American based counter part. As well, the ability of Canadian carriers to effectively access the huge American market, despite elimination of interstate entry control, may be a practical impossibility due to capital limitations; but for the American giants, a relatively minor extension of operations will allow complete coverage of the Canadian market.

In addition, large American L.T.L. carriers have much more extensive terminal networks, allowing them to enjoy substantial network economies not available to Canadian carriers. This, together with their geographic advantage and their ability to mix international and domestic traffic to a much greater extent places American L.T.L. carriers at a significant competitive advantage.

If the Canadian industry is deregulated and no other form of protection is set in place, the balance of trade in trucking services is likely to shift in favour of the Americans, and Canadian owned carriers may have no choice but to move their bases to the U.S. This will have significant adverse effects for employment and investment in trucking and related industries in Canada.

As well, as Canadian carriers lose their market share in major international (and possibly inter-provincial lanes), their ability to serve less attractive Canadian markets may be impaired.

Concerns also exist that if American trucking firms, due to their market power, come to control Canadian highway transport capacity we may be vulnerable during times of fluctuation in demand in the United States.

Furthermore, it is arguable that greater north/south transportation efficiences, promoted by deregulation, together with any movement toward freer trade, will deter trade between the provinces of Canada in favour of trade between states and provinces. Although this may make economic sense, it has the serious potential to undermine any sense we may have of a "Canadian community". Canadians may be prepared to place economics ahead of nationalism and consider its price too high. However, before our policy makers in parliament and the legislature make such a value judgement, we ought to be fully aware of the consequences of any step which may decide the question by momentum alone.

Although our entry control system has not selectively discriminated against American carriers, the system by its nature has restricted their entry and the level of competition, and together with foreign investment restrictions limited the possibility of American domination. With unrestricted entry and unfettered competition, the situation will change. We ought to know in advance the impact of this change, and if economic regulation is no longer desirable, be prepared with alternatives for the protection of Canadian control of its own highway transport capacity, and the promotion of east/west highway transport within the country.

The economist should not be the sole advisor on this subject. Dr. Dawson made his position clear when he responded in the affirmative when questioned as to whether he would place lower cost transportation above a Canadian controlled transportation industry. This is a value judgement for elected representatives of the people to make.

We must be careful how we approach the Americans. It is clear that they suspect our economic regulation as an unfair non-tariff barrier to trade in trucking services. Concern was expressed at the hearings that given the protectionist sentiment in the United States our export markets would be seriously jeopardized if we do not reciprocate American ease of entry policy. Will Americans understand that our peculiar geography and population distribution may necessitate intervention? What will be their response if restrictions on entry of American carriers or subsidies to Canadian carriers are proposed in our national interest? Should we find out their position in free trade negotiations before we deregulate?

In light of these concerns, the Board strengthened in its view that wholesale deregulation of a large number of commodities on economic grounds alone should not be accomplished by the Board on its own.

X. FAIRNESS AND ADVISABILITY OF ELIMINATING ECONOMIC REGULATION ON A COMMODITY - BY - COMMODITY BASIS.

A number of parties, including the Consumers Association of Canada, although in favour of total deregulation, are prepared to support extensions of the lists of designated commodities as steps in the right direction.

Dr. Dawson pointed out the dangers inherent in proceeding to deregulate on a commodity-by-commodity basis (p. 36-37);

> "With a relatively short list of ease of entry commodities, there is the danger of bottlenecks, particularly on thin routes. In other words, in markets where there is relatively limited traffic, carriers are less able to adapt their operations to more efficient T.L. equivalent units if they are restricted in the type of products they may carry. There is a loss of flexibility and the synergy which is

created when carriers have a full set of products to consider when designing their operations in the most efficient way possible. In the extreme case with only some products designated as ease of entry, there is a risk that in some markets the commodities which remain subject to restricted entry may constitute sufficient traffic that a new entrant will not be able to enter the market and provide service at all to the shippers of ease of entry commodities.

All of this discussion leads to the conclusion that the relaxation of the regulation of entry should apply to all commodities, except those that are subject to market conditions where competition cannot work. It also suggests that it is inappropriate to attempt to distinguish between commodities on grounds other than the adequacy of competition to ensure low cost and efficient trucking services."

As well, carriers opposing the proposal suggested the majority of the commodities under consideration, being of low value and historically moved as a backhaul, cannot be economically transported on their own, without a better paying headhaul. Either the Board must grant authorities for better paying balancing loads, or a class of non-viable carriers will exist, threatening industry stability and creating enforcement problems.

As well as being economically undesirable, deregulation on a commodity-by-commodity basis, in the view of the affected carriers, is extremely unfair.

Some carriers' authorities are limited to commodities on the proposed list. In such cases, deregulation of the commodities will result in such a carrier being subject to competition from all other carriers without being able to expand his operation with a view to capturing his competitor's market. Such carriers would prefer to see complete deregulation, as it would be more fair.

The Board is of the view that once the fundamental policy decision is made to eliminate economic regulation, it does not make economic sense and is grossly unfair to proceed to deregulate through successive extensions of a list of designated commodities. This further strengthens the Board's view that it should take a restrictive approach in this matter.

XI. COMPENSATION FOR THE LOSS OF VALUE OF OPERATING AUTHORITIES

A number of carriers argued that it was unfair to carriers to deregulate commodities named in their operating authorities without compensation. For example, N. Yanke Transfer Ltd. argued:

> "I am a farmer; if the government decides to confer a benefit upon other members of the community by building a road directly across my farm land rather than around it, I expect to be paid compensation for the injury caused.
>
> Similarly, where I had to invest in authorities to lawfully give a competent and reliable service to my customers, if the government wishes to confer a benefit upon other businesses by destroying the value of my authorities, then it ought to compensate me for the injury caused.
>
> ...
>
> "...truely there will be some economic benefit to our customers from new entrants who will not have the cost of authorities and from those carriers with profitable controlled headhaul traffic which can cross-subsidize the movement of our commodities at less than competitory (sic) rates; but Yanke, after this proposal is in place, will be uncompetitive because it continues to bear the unrecovered cost of its truck authorities which were required under the prior truck transport regulatory scheme, and because Yanke will not be left with any profitable controlled headhaul traffic to cross-subsidize its movement of the ease of entry commodities."

H. A. Musty Transport Ltd. of Saskatoon put it this way:

> "We, as others now involved in the transport industry, are serving the market as authorized by the various jurisdictions. The authorities held have been obtained with considerable expense in time and money and often with great difficulty.
>
> ...

...

"If the authorities held had been obtained by purchase of the assets and shares of transport enterprises wishing to discontinue service then the purchase price has reflected to a significant degree the extent of the commodity list and the geographic limits of the authorities held.

"As a consequence of the above any commodity that is to be included on the "fitness" list will have a diminished value on the commodity list of any authority presently held. Subjecting the industry to major losses in potential resale value may not be an objective of the proposed changes; however it will, nevertheless, be the ultimate result of such action."

Even Dr. Reschenthaler in his submission on behalf of the Consumers Association of Canada had some minimum level of sympathy for owners of operating authorities (pp. 17-18):

"There are, however, two clear groups of losers from a policy that substitutes a Fit, Willing, and Able Standard for a PCN or Reverse Onus PCN test. These groups are present holders of operating authorities and organized labour in the industry. Operating authorities have value because they represent annuities of excess or supra-competitive profits. If extra profits being earned on some routes were tied to and only counterbalanced losses on others, then operating authorities would have no market value. Their values reflect these supra-competitive aggregate revenues being earned on individual routes, and the fact that overcharges on some routes are not being used to fully subsidize other routes.

"Owners were never guaranteed that these monopoly profits would be earned in perpetuity. Consumers and shippers do not owe these owners excess profits in perpetuity. In the same way, if some elements of organized labour have been able to capture a share of these excess profits in the form of excess compensation or costly, restrictive work rules, they must realize that this is not a perpetual claim on consumers and shippers.

"It is understandable that both groups should object to changing the system. We can only suggest to labour that no effort will be made to capture past excess payments. We can suggest to owners of operating authorities that they request special tax treatment or writeoffs of the value of operating authorities."

It was also argued that if we do not allow carriers to write-off the value of operating authorities, American carriers will have a competitive advantage, for when deregulation occurred in the United States, the American carriers were allowed to write-off the value of their operating authorities.

On the other hand, during the hearings the Board Chairman pointed out that Section 293(1) of The Highway Traffic Act (Manitoba) states:

> "293(1) No right, privilege, or certificate held under or obtained under this Part shall be capitalized; and it shall not be sold, assigned, leased or transferred, except with the approval of the transport board had and obtained in writing."

Thus, in paying substantial sums for operating authorities, the carriers were participating in an illegal act and perhaps should have little sympathy if what they paid for turned out by a change of government policy to be worthless.

However, on balance, the practical reality of the situation and the Board's connivance at the activity over the years gives merit to the argument of the adversely affected carriers.

The Board is not in a position to direct that compensation be paid. It is up to the carriers themselves to present their case to the federal government, which has the power to make the necessary Income Tax Act Amendments.

However, the adverse impact on the value of a carrier's business when commodities he is authorized to transport are deregulated is a factor contributing to the Board's reluctance to designate commodities except in limited circumstances.

XII. THE IMPACT ON LABOUR

As quoted above, the Consumers Association of Canada in its submission, prepared by Professor Reschenthaler, argued that remuneration has been excessive for labour in the trucking industry as they have been able to capture a portion of the excess profits of the regulated carriers. Labour, in his view, must realize that this excess remuneration cannot be a perpetual claim on consumers, and be thankful that no effort will be made to capture past excess payments.

In the view of the Board, this statement was made without evidence that in fact consumers were overcharged, trucking companies made excess profits, and employees in the industry made excess wages. As well, Professor Reschenthaler has ignored the argument that an operating authority may have value as it allows entry into a more stable, regulated industry in which individual firms face reduced risk.

A trucker may be quite prepared to pay a price for an improved chance of moderate profits, just as any investor will expect greater profits from more speculative investments. The trucker is not necessarily paying for greater than normal returns; and if regulation is effectively administered, no such supra-normal profits will exist.

As noted earlier, intra-Manitoba, the indications are that the carriers receive below normal returns.

Furthermore, whether someone receives excessive remuneration in the Board's view is entirely a value judgement and not a matter that can be left solely to the forces of supply and demand. The economist may wish to treat labour as just another commodity input into production, but it never should be forgotten that "labour" is comprised of human beings with families to feed, cloth and shelter, expectations based on past experience, and aspirations for a better life. The Board finds it the height of insensitivity to tell someone that he must realize his remuneration must be reduced for the national good and that he should be thankful that we do not try to take back previous "excess payments".

The Board has no doubt that those employed in the trucking industry will suffer as a result of deregulation. In the United States, after deregulation, according to the Teamsters Union, most new carriers have been non-union, paying drivers 43% less on average than those covered by labour agreements. Further, the Teamsters Union in the United States has been forced to accept a two tier wage system which has reduced wages for new hirees in excess of 40%. The Board firmly believes that prior to any extensive deregulation occurring, thorough study of the potential impact on deregulation on those employed in the trucking industry ought to be made, with a view to providing legislative protection to ameliorate the consequences. The evidence is clear that the reductions in transport costs which follow the elimination of economic regulation come primarily at the expense of labour. Employees in one sector of the economy should not be forced to bear the cost of lowering the cost of production of the country as a whole.

The Board rejects any argument that expanding the list of designated commodities would enhance the position of the owner-operator. The Board concurs with the view of Mr. Cirelli, who spoke on behalf of the Canadian Brotherhood of Railway, Transport and General Workers at the Saskatoon hearing, that the bargaining power of owner-operators will not be enhanced by designating a list of commodities. There are simply too many owner-operators available. Furthermore, the Board is of the view that most of the commodities on the list historically have moved at low rates as a backhaul and an owner-operator would have difficulty running a viable business transporting designated commodities alone.

XIII. NATIONAL UNIFORMITY

Whether opposed to or in favour of deregulation generally, carriers universally took the view that national uniformity in extra-provincial trucking regulation was essential. Carriers within each jurisdiction feared that without all provinces implementing the expanded list, carriers from other jurisdictions would be able to come into the deregulated area and pick-up or drop-off freight, while at the same time carriers from the deregulated jurisdictions would not be able to do so in the regulated jurisdictions. Unilateral action, it was argued, will result in substantial diversion of traffic to out of province carriers. Accordingly, it was argued that implementation should be deferred until all of the jurisdictions are prepared to act uniformly.

Other carriers went further and insisted that uniformity must also extend to safety and labour standards and taxation to allow fair competition on even terms between carriers located in the various jurisdictions.

Although the Board has some sympathy for this view, due to the restricted bases upon which the Board has decided to proceed to formulate its list of ease of entry commodities, the greater weight it wishes to give to responding in a timely manner to the need for reform, and the need for immediate certainty, the Board will place its list in effect without waiting on other provinces to do so. This follows the example of New Brunswick, which recently passed legislation entirely deregulating a list of commodities effective February 1st, 1986. As well, the Board expects the publication of this decision alone will result in immediate de facto deregulation of the subject commodities in any event.

As well, the Board is of the view that the prairie provinces constitute a region with peculiar characteristics and the impact of having different ease of entry lists from other regions may be lessened, depending upon the particular commodities in question.

In order to accommodate the concern that Manitoba based carriers will be placed at a competitive disadvantage, the Board will refuse to accept applications for designated commodity authority from carriers based outside of Manitoba unless the jurisdiction in which the carrier is based grants substantially similar privileges to Manitoba carriers.

The Board is also of the view that the need for national or regional uniformity is a matter which may be considered in the assessment of whether a commodity should be designated.

XIV. SAFETY AND DANGEROUS GOODS TRANSPORTATION

The Board believes public safety is of paramount concern to all governments in the country when considering changes to trucking regulation.

Carriers opposing the proposal generally suggest that dangerous commodities ought to be excluded from consideration. They argue it is a mistake to allow virtually any carrier to transport dangerous commodities, particularly when no criteria for "fitness" have been formulated. In their view, dangerous goods should be transported only by experienced, reliable and accountable carriers; the required standards cannot be effectively enforced by substantially expanding the number of carriers. It was argued that it is in the public interest to strictly control the carriers who are authorized to transport dangerous goods and to be satisfied that they are properly equipped, trained and financed to engage in their transport; it is contradictory to implement dangerous goods legislation and then allow anyone to provide that service.

The Manitoba Trucking Association, in particular, states that courses being conducted by the Association will not bring participants up to a standard that will allow them to react appropriately in the event of an emergency. In the Association's view, the best protection is to ensure that dangerous goods are being carried by those with expertise, who have satisfied the existing entry criteria. To allow an inexperienced person having met minimal "fitness" standards to transport dangerous goods is alleged to be irresponsible and heightens the chance of an accident occurring.

On the other hand, the Consumers Association of Canada took the view that safety objectives can be achieved without economic regulation. As well, Service Transport Ltd. reasoned that satisfactory control in the transportation of dangerous goods exists independent of economic regulation inasmuch as they are hauled in specialized equipment, with required safety features and built to government standards; they are shipped by sophisticated shippers who will not use any carrier who has not proven his capabilities; insurance companies will only insure a carrier of dangerous goods with a proven claims history; existing dangerous goods regulations are adequate in themselves without economic regulation; and an appropriate fitness test will adequately meet any remaining concerns.

The Board is inclined to agree that safety is an issue that can be addressed independent of the question of elimination of economic regulation. Proper enforcement of appropriate dangerous goods regulations, and other safety regulations, appropriate education programs and an appropriate fitness test should be adequate to protect the public.

On the other hand, the Board is concerned that deregulation will make enforcement more difficult inasmuch as it is likely there will be a greater number of small operators in the market with less concern about their public image than the existing regulated carriers. Resources committed to enforcement of safety and fitness standards must be increased from present levels. The Board expects such an increase will be forthcoming, both from the Federal and the Provincial governments. Accordingly there is no need to delay implementation of any elimination of economic regulation, whether respecting a particular commodity or the industry as a whole, out of concern for safety.

XV. DEFINITION OF "FITNESS"

Many carriers, the Manitoba Trucking Association, and the Alberta Trucking Association argued strongly that prior to any significant expansion of the list of designated commodities, an appropriate uniform national definition of fitness ought to be developed, in consultation with the industry.

Some carriers, notably the household goods carriers, pointed out that their fitness standards ought to be different from those for carriers transporting other commodities, due to the infrequent use of their service by individual shippers and the specialized nature of the service. On the other hand, in the Board's view, fitness standards ought not to be so stringent as to infringe on consumer choice.

A number of interested parties provided useful information as to the criteria for a fitness test. However, the Board does not perceive it as its role at this time to establish a national definition of fitness on its own. Accordingly the details of the suggestions are not reviewed here.

The Canadian Conference of Motor Transport Board Administrators is presently developing a national uniform definition of fitness, pursuant to the direction of the Council of Ministers in the Memorandum of Understanding of February 27. This work was scheduled to be accomplished by December, 1985, and is expected to be completed shortly. The Board has provided C.C.M.T.A. with the benefit of the advice of those who touched upon the question of "fitness" in their submissions in these proceedings.

In any event, the national uniform definition of fitness was contemplated to be the entry test to replace the test of public convenience and necessity if and when it is entirely eliminated across the country for extra-provincial movements. The Board presently has in place a minimal fitness test, which every carrier must satisfy, whether applying for authority to transport regulated commodities or those on the existing designated list. This test is considered adequate at the present time for authority to transport the additional commodities the Board will designate in consequence of this Decision, for the following reasons: the additional commodities represent a small proportion of the total volume transported by the industry; the grounds upon which the Board has decided to designate each commodity indicate the present entry test of public need or convenience does little more than the existing fitness test in most cases; and publication of this Decision will almost certainly result in an immediate breakdown of the hearing process for the commodities to be designated. Furthermore, the Board considers it essential to reduce the uncertainty in this area as much as possible, as soon as possible.

When a national definition of fitness is agreed upon, the Board will adopt it for all future applications and will apply any further ongoing monitoring agreed upon to all carriers, regardless of when their operating authority was received, and whether or not they transport regulated or designated commodities.

XVI. MATTERS TO BE CONSIDERED IN DETERMINING WHETHER TO DESIGNATE A PARTICULAR COMMODITY

After consideration of all submissions and the report of the Chairman, the Board accepts the following as matters to be considered in determining whether to designate a particular commodity:

1. If substantial economies of scale exist for the transport of the particular commodity, does the regulatory system as presently administered effectively prevent abuse of market power; or is the regulatory system patently unnecessary to do so in the circumstances?

2. Is it patently obvious that there need be no concern respecting the stability of the industry and the loss of continuity of service in the transport market of the particular commodity?

3. Is it clear there need be no concerns respecting deterioration of existing service levels or excessive price discrimination, particularly in respect of small shippers and small and remote communities, both for commodities to be designated and those remaining regulated?

4. Has the regulatory system patently failed to meet the needs of the shippers of the particular commodity?

5. Has the system, as presently administered, become irrelevant to the transportation of the particular commodity; for instance, are all applications for its transport unopposed; is there already substantial little exercised operating authority to transport the commodity in the industry; is an exceedingly high level of competition already evident, such that it is impossible to assess the impact of another carrier on the public convenience; is the level of private carriage so high that public carriers can only gain traffic by deregulation?

6. Are there irrational and unjustified inconsistencies in the level of regulation between provinces and in the level of intra-provincial, inter-provincial, and international regulation, particularly where due to the nature of the transport market it is not severable into such categories?

Having considered the above matters, the Board must be satisfied that it has been clearly demonstrated the public interest will be served by designating the particular commodity in question. The Board should not presume unfettered competition will best serve the public interest.

XVII. ARGUMENTS RESPECTING PARTICULAR COMMODITIES

1. Sand, gravel, crude stone and soils;

The transportation of gravel and sand is presently entirely exempt under Manitoba Regulation 231/73. Limestone rock and clay have been agreed by the Board to be exempted, although the regulation is not yet prepared.

No submissions opposing the proposal in respect of these commodities was received. Whenever the trucking industry, always very much on guard for its interest, entirely ignores a proposal to designate a particular commodity the Board takes it as a clear indication its continued regulation is irrelevant.

Crude stone and soils can be considered so closely affiliated to sand and gravel that the Board sees no need for them to have differing levels of regulation. As well, the Board sees no need to elevate the level of regulation from exempt (no fitness test) to designated.

Sand, gravel, crude stone and soils will be added to the list of exempt commodities through the amendment of Manitoba Regulation 231/73.

2. Nursery and greenhouse stock and horticultural commodities (including peat moss);

Flowers Canada filed a written submission with the Boards supporting the proposal to designate these commodities. In it they pointed out that major cities have been serviced extra-provincially by air since phasing out of railway express. Smaller communities were left to rely on truck and bus; many trucklines were authorized to carry flowers and plants, but few did so and those that did took advantage of the situation. Flowers Canada is of the view that the transportation of flowers and plants, being highly perishable, low weight, larger volume commodities has been shunned by many of the licenced carriers.

No carrier specifically responded to this submission. The Board accordingly accepts the complaints of Flowers Canada.

Some concern was expressed regarding the movement of peat moss intra-provincially, particularly by Whitemouth Transfer. The Board is prepared to accept that the carriers transporting peat moss intra-provincially will be seriously adversely affected should they lose such freight, to the extent that continued service to their respective communities would be in jeopardy.

Peat moss is presently designated in its final movement internationally. The Board considers it inappropriate to encourage international transport over and above inter-provincial transport. This inconsistency in the level of regulation for inter-provincial versus international transport should be eliminated.

Accordingly, nursery and greenhouse stock and horticultural commodities (excluding peat moss) will be designated both intra and extra-provincially. Peat moss will be designated extra-provincially only.

3. Fertilizer;

The Board found no demonstrable inadequacies in the transport of fertilizer intra-provincially, despite the seasonality of demand. Temporary permits in the peak season are readily available, and in fact it has become necessary to issue relatively few. Furthermore, no one came forward to complain about fertilizer transport service. On the other hand, some have suggested there is a particularly high level of illegal transport of fertilizer.

Fertilizer constitutes 4.5% of the revenue of the radial carriers represented by Mr. Foran. The Board accepts that the loss of this freight will adversely affect the radial carriers.

On the other hand, there are four major carriers authorized to serve all points intra-Manitoba for the transportation of fertilizer, and a similar number with more restricted fertilizer authority. The Board believes that if radial carriers were going to lose all fertilizer shipments through deregulation of the commodity, they would have already. They have not, and the Board believes this is so because they are located close to those requiring the service and are responsive to their needs. This situation will not change if the transport of fertilizer is deregulated.

The Board is also of the view that the distribution pattern required for fertilizer transport is not conducive to a radial carriage system. Radial carriers themselves may benefit from the flexibility available to them to transport fertilizer throughout the province and extra- provincially, just like their specialty carrier competitors.

Concerns regarding further erosion of LTL freight to rural communities can be minimized through a "truckload lots" restriction. Accordingly, the transport of fertilizer moving extra-provincially and the transport of fertilizer in truckload lots moving intra-provincially will be designated.

4. **Agricultural chemicals, crop seed and herbicide treatments;**

There was no significant demand from shippers or consignees that this particular commodity be designated.

Agricultural chemicals comprise 4.5% of the combined revenues of the ten radial carriers represented by Mr. Foran.

The Board sees no justification for designating agricultural chemicals, crop, seed and herbicide treatments. The service to the public is presently adequate and at reasonable cost, and these commodities comprise an integral component of the regular LTL service provided by the radial carriers.

5. **Fresh vegetables;**
6. **Fresh fruits;**

These commodities are presently designated in their final movement internationally. The Board considers it irrational to allow unfettered competition in the north-south lane but not the east-west lane. This may discourage trade in these commodities between the provinces relative to international trade, which is patently undesirable.

The Board apparently published no formal reasons for its decision to designate a list of commodities in their final movement internationally. A transcript of the proceedings held in October and November, 1964, indicated that the primary justification was to reciprocate to some degree the American exempt list. The Board is of the view that this reciprocation ought to extend to Canadian provinces.

Designation inter-provincially will to a limited extent allow Canadian carriers more freedom to find loads on alternate routes through the provinces back to the United States, allowing the carrier to better compete with U.S. based carriers who can pick up and drop off in the U.S.

There is no indication that the regulatory system has failed to provide timely delivery of fruits and vegetables point to point within the province; and the Board can see no rationale to deregulate such movements.

The Board accepts that fruit and vegetables constitute an important element of pick ups from wholesale food distributors and form an integral part of the general commodities business carried by the radial carriers.

Fresh vegetables and fresh fruits will be designated extra-provincially only.

7. Fish, fresh or frozen;

The Freshwater Fish Marketing Corporation filed a submission in favour of designating fish as an ease of entry commodity both intra and extra-provincially, expressing the following concerns:

> "Because the general movement of the fish from the lake to the main plant in Winnipeg is west to east, most of this movement is considered a backhaul and rates are lower than they might otherwise be. However, due to the regulation of fish as a commodity, the movement is complicated and made more expensive by the necessity to have interlining carriers with the authority to move fish from the other provinces to Manitoba.
>
> Because of the locations in which fishing is carried on, frequently there is only one carrier who is licensed to haul into a fishing community. This severely impacts on the ability to negotiate rates. In some areas, freight is the largest single cost factor to fishermen and the cost of freight plays a large factor in determining the viability of commercial fishing. Like many primary producers, as energy costs have risen, fishermen have been caught in a cost/price squeeze.

> With respect to the line-haul carriers in Western Canada, there appears to be little rate competition despite the volumes to be shipped. With respect to carriers into the United States, there are only a few carriers who are authorized to transport fish from Manitoba. Those who are licensed recently opposed the granting of authority to a firm who was prepared to do the job at a better rate. Fortunately, the authority was granted with the result being a significant cost saving for our fishermen. However, the granting of the authority took approximately one year to obtain during which time higher freight expenses were incurred than if the applicant had been permitted to haul while the authority was being reviewed."

The Board accepts these concerns as valid; no carrier specifically addressed these concerns in response.

However, radial carriers expressed valid concerns respecting the loss of fish shipments from food wholesalers to their respective communities. There is no indication that such service is inadequate. As well, the Board is concerned that a number of "radial" carriers rely heavily on a fish "backhaul" to maintain their viability and thus their regular L.T.L. service.

Accordingly, the transportation of fresh or frozen fish will be designated extra-provincially only.

8. **Grains, unmilled;**
9. **Animal feed and feed ingredients;**

The transportation of farmers' grain to market is presently exempt. No change in this status is proposed.

The Board agrees with the submission of Cargill Limited that:

> "... the proposed expanded common list will create benefits for the farm sector in the form of quicker services and more competitive rates for the movement of both farm products and farm inputs.
>
> The new approach to ease of entry commodities would, for example, allow any trucking company meeting the fitness test to haul fertilizer out to a country elevator point or to an individual farm location and, on the return trip, to pick up grain from a local elevator and to haul back to an elevator with space for grain delivery or to a grain user such as a feed mill or livestock operation. This type of movement has the potential to open up elevator space for deliveries in the country.

> The potential to more fully utilize hauling capacity could mean direct and immediate benefits in the form of lower rates. Increased opportunity to haul economically by truck could also result in financial benefits to farmers who may find both a broader array of market opportunities and cash flow benefits."

As well, grain is exempt within Saskatchewan; given the Board is of the view an adverse effect on Manitoba carriers is unlikely, the goal of achieving uniformity should be furthered.

The transportation of unmilled grains and animal feed and feed ingredients will be designated for these reasons, as well as those respecting fertilizer. A truckload lots restriction will apply intra-provincially.

10. Salt in bulk;
11. Crude wood products;
12. Wood pulp;
13. Lumber (dimensional stock);
14. Composition sheathing (including gypsum wallboard);

No substantial concerns were expressed by the carriers respecting these particular commodities. Accordingly, the Board takes it their continued regulation is unnecessary and irrelevant. This is evident as well in respect of lumber in that applications for authority for its transport are consistently unopposed.

Transportation of the above commodities be will be designated. However, to provide some measure of protection to the LTL service of the radial carrier, transport shall be restricted to truckload lots only for intra-provincial movements.

15. Buildings or structures;

The transport of buildings and structures is a highly specialized service, utilizing expensive specialized equipment and requiring specialized skill. Any flood of entrants to the business is highly improbable. As well, no "cross-subsidy" is inherent in the service - it is by its nature an exclusive activity of the carrier. As well, economies of scale are evidently not such that one need be concerned about market domination.

Further, there is no consistent pattern of demand between any particular points, making it virtually impossible for a meaningful assessment of the public need or convenience.

Accordingly, the transport of buildings or structures will be designated.

16. Agricultural equipment;

This was likely the most hotly contested commodity on the list.

There are some factual assertions made by each side that are inconsistent. On written material alone, the Board is not in a position to make a proper credibility assessment.

However, there are a number of facts that appear incontestible. Firstly, very little if any truckload lots of agricultural equipment are moved intra-provincially by public carriers; presently agricultural equipment moves primarily by private carriage. Designation may infact allow the public carrier to regain some of the traffic. Secondly, substantial authority to transport agricultural equipment is presently unexercised. A flood of new entrants is highly unlikely - the market simply is not that attractive, and a new entrant will be at a disadvantage to the existing carrier with authority to transport a balancing load. Thirdly, shippers are very unsatisfied with the present state of affairs. Fourthly, the transportation of parts and accessories for agricultural equipment is presently satisfactory and to designate such commodities would create substantial enforcement difficulties. Parts and accessories form an integral component of the LTL freight of the general freight carrier.

In light of the above, the Board is satisfied shippers and consignees of agricultural equipment require public carriers who are in a position and wish to better fulfill their transport needs. As well, the Board considers it undesirable to impose a higher level of regulation extra-provincially than intra-provincially.

Accordingly, the transportation of agricultural equipment (excluding parts and accessories) will be designated. A truckload lots restriction will apply to intra-provincial movements.

17. Recreational trailers and mobile homes;

For the same reasons as applied to buildings or structures above and hauling of motor vehicles below, and with special consideration to the submission of the Alberta Manufactured Housing Association, the transport of recreational trailers and mobile homes and parts, accessories and assemblies moving in conjunction therewith will be designated.

18. Domestic livestock;

No one presented any submission in favour of designating the transport of domestic livestock within Manitoba. Livestock transport needs intra-provincially are adequately met by existing carriers. Radial carriers vociferously opposed the designation of livestock. Livestock comprises 9% of the revenue of the ten radial carriers represented by Mr. Foran. Several carriers rely very heavily on livestock as a backhaul to maintain their viability. Without substantial justification, the Board will not designate livestock intra-provincially.

Livestock is already designated internationally. To allow for consistency between inter-provincial and international regulation (as discussed above) and in response to the failures of regulation to meet the need for expedient service as described by the Alberta and Saskatchewan Pork Producers Marketing Boards, domestic livestock will be designated extra-provincially.

19. Race and show animals;

Nationwide Horse Carriers Inc. filed a submission with the Boards opposing designation of race and show animals and were well represented by B. A. Johnstone at the hearing.

It was argued on their behalf that ease of entry would fragment the limited demand so that no carrier would be able to sustain a reliable level of service. A stable and continuous national and international service would be lost, due to the loss of economies of scale. It was further argued that cross-subsidization of non-lucrative routes by lucrative routes exists and that it is important to have carriers obligated to service all points.

In the view of the Board, to restrict entry because of the economies of scale and then to fail to control rates is fundamentally wrong. By doing so, the threat of another entrant which may control abuses of market power is removed and no counterbalancing control is put in its place. In such circumstances, the Board considers it safer for the shipping public to have unrestricted entry, other considerations aside.

The Board has difficulty accepting that non-lucrative routes are cross-subsidized by lucrative routes in the operations of Nationwide. Nationwide applied for all points authority. The Board does not believe an all points authority was sought merely as a public service - it was more likely sought because it will allow the carrier to offer a complete service at a reasonable return to all potential customers.

If in fact the transport market for race and show animals is naturally monopolistic or oligopolistic as argued, which the Board doubts, there is certainly no need to be concerned about destructive competition. It will be very difficult for a new entrant to enter the market (unless the existing carriers charge excessive prices or give inadequate service), for the existing carriers will inevitably have lower costs than any new entrant.

Further, shippers of race and show animals themselves are certainly knowledgeable regarding their transport requirements, and unless any number of shippers want some lesser quality of service (in which case there is no reason why they should not have it), there is little need to be concerned that consumer ignorance will perpetuate inferior service offerings to the detriment of the responsible carrier. The Board expects race and show animal owners take special pains to ensure their significant investments in such animals are secure by using only reputable carriers recommended to them by friends in the industry.

As well a large proportion of intra-provincial movements are performed by private carriage.

For these reasons the transport of race and show animals will be designated.

20. Armoured car services (coins, paper currency, cheques, precious metals, bonds, securities and articles of extrinsic or intrinsic value);

This is a highly specialized service provided to highly sophisticated customers. The customers determine the limited number of competitors in the industry. Concerns about abuse of market power, destructive competition, or a need to impose cross-subsidies are non existent. Service levels will be set by the customers at the level they desire and compensation will inevitably provide no more or less than a normal return.

"Armoured car services" will be designated.

21. Towing and hauling of motor vehicles;

These are two distinct categories.

Towing of disabled motor vehicles by vehicles operated by "local garages" is presently exempt. This provision makes it difficult to enforce regulation of tow truck operators because the term "local garages" is ambiguous. This term should be clarified, but the Board sees no need to elevate the level of regulation to include a fitness test.

Demand for the towing of disabled vehicles is not likely very much dependent on the level of economic activity in the economy generally. In fact, vehicles may break down in hard times even more frequently due to a reluctance to expend money on maintenance and replacement of old vehicles. Destructive competition is no more likely than in any other small service industry, and the adverse consequences no more severe. The towing industry does not have the "special" attributes of the transport industry generally. Continuity of service is less important. Economies of scale are non-existent. Cross-subsidization does not exist.

The towing of disabled motor vehicles will be exempted by an amendment to Manitoba Regulation 231/73.

Designation of the hauling of motor vehicles was vigorously opposed by the vehicle transporters, Canadian Auto Carriers and V.O.T. Transport.

Quite frankly, the Board considers virtually every argument presented in favour of maintaining entry control in respect to this commodity as a good justification for its elimination.

Substantial economies of scale apparently exist, although it is highly unlikely the industry is a natural monopoly. Again, without rate control it is pointless to regulate entry solely on the grounds economies of scale exist.

In any event, the shippers are highly sophisticated and have excellent if not superior bargaining power to that of the carrier. They are quite capable of looking out for their own interests and those of their consignees, with whom due to the nature of the business their interests are identifiable.

Destructive competition of the nature described in this report is impossible. Entry is limited by the nature of the market and the high cost of equipment.

If "cross-subsidization" exists, it would be solely because the shippers wish to equalize their transport costs throughout the market for business purposes, and wish to retain a carrier willing to serve the entire market. The shippers, being sophisticated and undoubtedly wishing to serve all dealers at reasonable cost, and the whole market at minimum cost, are unlikely to allow penetration of "cream skimmers". If the shippers seek to determine rural based, more remote dealerships are not in their interests, they will be eliminated regardless of government transport policy. The shippers will effectively "regulate" this particular transport market on their own.

Accordingly, transport of motor vehicles will be designated.

22. Newspapers;

No submissions were received in respect to this commodity whatsoever.

The Board is not surprised. Economic regulation is completely redundant for this commodity.

Manitoba's newspapers are delivered in rural areas by carriers selected by the newspapers. The only support necessary is from the newspaper. If the newspaper is dissatisfied with the service, it will withdraw support and sponsor another applicant. Applications are rarely if ever opposed. The Board, rightly or wrongly, for a long period has effectively abdicated its role in assessing public need or convenience to the newspapers themselves.

The Board perceives no adverse consequences from designating newspapers as ease of entry, and accordingly, will do so.

23. Magazines and periodicals;

No shipper came forward and argued in favour of deregulating this commodity.

Penner International Inc. appeared and demonstrated the transport of magazines and periodicals is performed in a timely manner. Reimer Express Lines Ltd. stated magazines were well looked after by the expedited services of existing carriers.

All things considered, the Board sees no basis for designating the transport of magazines and periodicals.

24. Water and ice (inedible);
25. Waste and scrap materials;
26. Other service vehicles, ambulances, escort vehicles, taxis and liveries;
27. Metal ore, metal in ores and concentrates;
28. Coal, crude oil/salt water emulsion;
29. Shipping and distribution containers and closures;

Very little interest was expressed in these commodities at the hearings with the exception of a few radial carriers who expressed concern regarding the designation of shipping and distribution containers and closures.

Water and ice will be exempt. There is no need to restrict the exemption to "inedible".

Waste and scrap materials, coal, and crude oil/salt water emulsion will be designated. Ore and ore concentrates are already designated.

"Other service vehicles" is too ambiguous for consideration. Ambulances are exempt by the definition of "public service vehicle" in the Highway Traffic Act. The Board does not consider escort vehicles within their jurisdiction as they do not transport persons or property for compensation.

"Shipping and distribution containers" have been adequately dealt with by Board Policy Statement No. 1, for intra-provincial movements. The Board is satisfied this class of commodity should be designated when moving extra-provincially.

With respect to inter-municipal liveries based outside of Winnipeg, the Board will give further consideration to a proposal that operating authority to transport persons on trips which originate or terminate in the Municipality in which the operator is based be granted upon the filing with the Board of a certified copy of the Resolution of the Council of the Municipality in which the operator is based, supporting the Applicant, and the undertaking of the carrier to comply with the provisions of the Inter-Municipal Livery Tariff (rate control would be maintained). The Board wishes to consult the Union of Manitoba Municipalities and affected groups directly before implementation of such a proposal.

Livery operators based in Winnipeg when licenced under the Taxicab Act and appropriately registered will continue to not be required to have an operating authority for trips which originate or terminate in Winnipeg, provided they comply with the Inter-Municipal Livery Tariff of the Transport Board.

30. Household goods;

By Board Order 11/66, household goods in extra-provincial movement have already been designated "when transported by a federal carrier who is not a resident of Manitoba but who is authorized as a household goods carrier in his jurisdiction of residence, and who delivers the goods in or pick-ups the goods in Manitoba by arrangment with a carrier licenced in Manitoba to perform the same extra-provincial undertaking".

By this Order, the Board has in essence delegated to existing carriers its duty to assess the public need and convenience. Existing carriers get to decide who may enter Manitoba's extra-provincial transport market, a situation which is hardly conducive to fostering competition between carriers.

There are about 17 household goods carriers authorized both intra and extra-provincially in Manitoba. This creates difficulty for the Board in ascertaining whether the addition of one further competitive service is or is not in the public interest. As well, Applicants face great difficulty in obtaining public support from a number of prospective, unknown, once in a lifetime shippers. In the view of the Board, the public need or convenience test simply is not suitable and does not work for the household goods industry.

Further, shippers of household goods, not relying on any regular service, need be less concerned about continuity of service. What is needed in this industry is consumer protection and effective enforcement of performance standards, not economic regulation.

It was the perception of the Board Chairman that after some debate in the hearing room, the carriers themselves acknowledged this fact.

Accordingly, household goods, as defined in Tariff M101, will be designated. The Board sees no need to prescribe a separate fitness test for household goods carriers at this time, however, the designation order will provide that household goods may not be transported together with any other designated commodity.

In order to protect against excessive price or service discrimination in intra-provincial movements, carriers will continue to be obliged to comply with Tariff M101. The Board will reconsider its decision in this regard after a reasonable period of monitoring the effect of elimination of entry control.

31. Damaged or rejected goods, previously moved;

There is no need for such goods to be designated. All carriers with authority should simply be deemed to have authority to transport damaged or rejected goods which they have previously moved. This could be accomplished through an appropriate Policy Statement.

32. Corridor operations;

Under our New Rules of Procedure, the Board already grants corridor applications summarily. The Board has taken the view that the public convenience is promoted by granting a corridor authority to any applicant who files satisfactory evidence that he has authorities from the jurisdictions of origin and destination. This is sufficient.

XVIII. SUMMARY

1. The Board accepts the view that the decisions of the Legislature of Manitoba and the Parliament of Canada to establish economic regulation are public policy decisions beyond the scope of the Board to reverse through the exercise of the power to designate commodities pursuant to subsection 289(1) of The Highway Traffic Act. These public policy decisions were based upon the value judgment that market forces alone would not adequately prevent abuses of market

power; would not ensure suitable levels of continuity and regularity of service, regardless of volumes, to all communities at reasonable cost; would not allow effective use of transport as a tool to facilitate economic development; and would not allow the development of a transport system which serves the best interests of the Canadian community. Being a value judgment, a decision respecting the future of economic regulation cannot be analyzed for its "correctness" by reference to economic arguments alone.

2. The Board must be satisfied by those seeking the designation of a commodity that it has been clearly demonstrated the public interest will be served by doing so.

3. The Board in its advisory role will convey to the Minister of Highways and Transportation the concerns expressed at the Hearing regarding the direct costs of the administration of the regulatory system, its unfairness and the inefficiencies it imposes; the effectiveness of the system to achieve its purposes; and the consequences that may follow the elimination of regulation, including the impact on service levels to small communities in rural Manitoba, the impact on those employed in the trucking industry, and the impact on the viability of a Canadian based and controlled motor carrier industry. The information obtained in the Hearings will be of significant assistance to the Government in its assessment of the benefits of regulation verses its costs and in its attempts to ameliorate any adverse consequences of reform.

4. The Board in its advisory role will convey to the Minister of Highways and Transportation the concerns expressed at the Hearing regarding the inadvisability and unfairness of deregulating through successive extensions of the list of designated commodities, the need for national uniformity in the levels of regulation and in timing and manner of implementation of changes, the need to follow through expeditiously with plans to place greater direct emphasis on safety issues, the need to respond in a timely manner to pressures for reform, and the need to eliminate uncertainty as soon as practicable.

5. Pursuant to subsection 289(1) of The Highway Traffic Act, the Board will designate the following commodities as commodities which may be transported by any qualified carrier without proof of public need or convenience, when transported in their final movement extra-provincially:

1. Nursery and greenhouse stock and horticultural commodities; (including peat moss);
2. Fertilizer;
3. Fresh vegetables;
4. Fresh fruits;
5. Fresh or frozen fish;
6. Unmilled grains;
7. Animal feed and feed ingredients;
8. Salt when transported in bulk;
9. Crude wood products and wood pulp;
10. Lumber (dimensional stock);
11. Composition sheathing (including gypsum wallboard);
12. Buildings or structures;
13. Agricultural equipment (excluding parts and accessories);
14. Recreational trailers and mobile homes, and parts, accessories and assemblies moving in conjunction therewith;
15. Domestic livestock;
16. Race and show animals;
17. Armoured car services (coins, paper currency, cheques, precious metals, bonds, securities and other items of extrinsic or intrinsic value);
18. Motor vehicles;
19. Newspapers;
20. Waste and scrap materials;
21. Coal;
22. Crude oil/salt water emulsion;
23. Shipping and distribution containers and closures (empty);
24. Household goods as defined in Board Tariff M101, when transported as the sole commodity in the vehicle.

6. Pursuant to subsection 289(1) of The Highway Traffic Act, the Board will designate the following commodities as commodities which may be transported by any qualified carrier without proof of public need or convenience, when transported to and from points within the Province of Manitoba:

1. Nursery and greenhouse stock and horticultural commodities; (excluding peat moss);
2. Fertilizer when transported in truckload lots;
3. Unmilled grains when transported in truckload lots;
4. Animal feed and feed ingredients when transported in truckload lots;
5. Salt when transported in bulk;
6. Crude wood products and wood pulp when transported in truckload lots;
7. Lumber (dimensional stock) when transported in truckload lots;
8. Composition sheathing (including gypsum wallboard) when transported in truckload lots;
9. Buildings or structures;
10. Agricultural equipment (excluding parts and accessories) when transported in truckload lots;
11. Recreational trailers and mobile homes, and parts, accessories and assemblies moving in conjunction therewith;
12. Race and show animals;
13. Armoured car services (coins, paper currency, cheques, precious metals, bonds, securities and other items of extrinsic or intrinsic value);
14. Motor vehicles;
15. Newspapers;
16. Waste and scrap materials;
17. Coal;
18. Crude oil/salt water emulsion;
19. Household goods as defined in Board Tariff M101, when transported as the sole commodity in the vehicle.

7. The designation of the above commodities will be tentatively effective March 1st, 1986. The commodity list will be converted to the terminology of the Standard Transportation Commodity Code prior to implementation.

8. Pursuant to subsection 288(1) of the Act, effective March 1st, 1986, the Board will exempt persons engaged in the following transport activities from the necessity of holding a certificate and filing a liability insurance policy or bond:

    1. The transportation of sand, gravel, crude stone and soils;
    2. The towing of disabled motor vehicles;
    3. The transport of water and ice;

9. The Board is not satisfied it has been clearly demonstrated the public interest will be served by designating peat moss; agricultural chemicals, crop, seed and herbicide treatments; fresh vegetables; fresh fruits; fresh or frozen fish; parts and accessories for agricultural equipment; domestic livestock; magazines and periodicals; shipping and distribution containers; and less-than-truckload quantities of several major commodities; when transported intra-provincially.

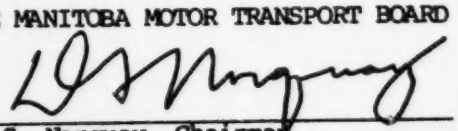
10. The Board is not satisfied it has been clearly demonstrated the public interest will be served by designating agricultural chemicals, crop, seed and herbicide treatments; parts and accessories for agricultural equipment; and magazines and periodicals when transported extra-provincially.

11. The Board will not accept an application for designated commodity authority from a carrier based in another jurisdiction unless that jurisdiction grants substantially similar privileges to Manitoba based carriers.

12. The Board is prepared to exercise its statutory power to reconsider and review its decision in respect of any particular commodity, after monitoring and assessing the impact of its decision over a reasonable period of time.

DATED at Winnipeg, Manitoba, this 23rd day of January, 1986, A.D.

THE MANITOBA MOTOR TRANSPORT BOARD



D. S. Norquay, Chairman

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APPENDIX "A"

MANITOBA

A. The following filed written submissions with the Manitoba Board:

1. J. E. Foran on behalf of: Arnold Bros. Transport Ltd.
   Klassen Trucking Ltd.
   Trimac Transportation Services Ltd.
   Bernie Dale Budd, o/a Somerset Transfer
   Critchlow Trucking Limited
   Hamiota-Kenton Transfer Ltd.
   Naaykens Transport Ltd.
   Pembina Hills Transfer Limited
   Polwarth Transport Ltd.
   Ken Potvin, o/a Swan Lake Transfer
   Prairie Freighters Ltd.
   Southwest Transfer (1983) Ltd.
   Greg Wanless, o/a Wawanesa-Belmont Transfer
   Koski Truckyn
2. Hugh Gabruch on behalf of: Tri-Line Expressways Ltd.
   Richards Transport Ltd.
   International Transport, Inc.
3. B.A. Johnstone on behalf of: Nationwide Horse Carriers Inc.
4. Consumers Association of Canada
5. Flowers Canada
6. Roblin Truck Service Ltd.
7. Reimer Express Lines Ltd.
8. Al's Towing Service Ltd.
9. Pioneer Grain Company, Limited
10. General Teamsters Local Union 979
11. Atomic Transfer Ltd.
12. Freshwater Fish Marketing Corporation
13. RKF Trucklines Ltd.
14. Altona Freightways
15. Arborg Transfer
16. Dawson Road Transfer
17. IKO Industries Ltd.
18. Manitoba Association of Rural Carriers
19. Manitoba Trucking Association
20. Manitoba Trucking Association (Household Goods Division)
21. Oakbank Trucking
22. Piney Transfer
23. Portage Transport Service, o/a Super Terminals Ltd.
24. The Mining Association of Manitoba Inc.
25. Tougas Transport Ltd.
26. Veitch Truck Lines
27. W. E. Bicknell Ltd.
28. Whitemouth Transfer
29. Prairie Implement Manufacturers Association
30. United Grain Growers Limited
31. Allans Transfer
32. Canadian Farm and Industrial Equipment Institute
    (The Manitoba Wholesale Implement Association)
33. Gelco Express Limited
34. Leeds Enterprises Ltd.
35. Cargill Limited

36. Manitoba Heavy Construction Association Inc.
37. Windmill Transport Ltd.
38. Forest Moving & Storage Co. Ltd.
39. Canadian Auto Carriers Ltd.
40. CP Rail

B. The following filed written submissions and presented an oral submission at the Hearing in Winnipeg.

Name	Represented
1. Mr. J. E. Foran and a Panel of)	
Mr. B. Perkins)	Prairie Freighters Ltd.
Mr. J. Witt)	Southwest Transfer (1983) Ltd.
Mr. J. Naaykens)	Naaykens Transport Ltd.
Mr. C. Thompson)	Hamiota-Kenton Transfer Ltd.
2. Mr. A. Koski	Koski Truckyn
3. Mr. F. Arnold	Arnold Bros Transport Ltd.
4. Mr. R. Downey	Klassen Trucking Ltd.
5. Mrs. B. Johnstone	Nationwide Horse Carriers Inc.
6. Mr. J. Veitch and a Panel of)	
Mr. S. Kurchak)	Roblin Truck Service Ltd.
Mr. B. Kindzierski)	Arborg Transfer
7. Mr. E. Peters	Reimer Express Lines Ltd.
8. Mr. L. Lakey	Atomic Transfer Ltd.
9. Mr. M. Babulic	The Mining Association of Manitoba Inc.
10. Panel of Mr. B. Hamre)	
Mr. J. Lysak)	Canadian Farm and Industrial Equipment Institute
Mr. J. Dwyer)	
11. Mr. F. Smith	Manitoba Heavy Construction Association Inc.
12. Mr. W. G. Ryall	Jade's Transport Ltd. and Penner International Transport Inc.
13. Mr. A. Nederhoed	Windmill Transport Ltd.
14. Mr. J. Veitch	Manitoba Association of Rural Carriers
15. Mr. D. Bicknell	W. E. Bicknell Ltd.
16. Mr. L. Alter	Gelco Express Ltd.
17. Panel of)	
Mr. Mulleur)	Manitoba Trucking Association
Mr. Wilder)	(Household Goods Division)
Mr. V. Switzer)	
18. Mr. A. Knapp	Al's Towing Service Ltd.
19. Mr. L. Blaschuk	Leed's Enterprises Ltd.
20. Mr. B. Russell)	Director of Investigation & Research
Prof. D. Dawson)	Combines Investigation Act.
)	Consumer and Corporate Affairs Canada

C. The following made an oral submission only, at the Hearing in Winnipeg:

1. Mr. L. Heeney	Morgan Drive-Away Service Ltd.
2. Mr. K. Kinley	Gladstone Transfer Ltd.

A L B E R T A

D. The following filed written submissions with the Alberta Board:

1. Butte Grain Merchants Ltd.
2. L. E. Matchett Trucking Co. Ltd.
3. Richardson Transport Ltd.
4. Ken Hirsche J.
5. Altwin Distributors
6. Reuber Transport (1979) Ltd.
7. Pro-Tran Carriers Ltd.
8. Fox's Transport Ltd.
9. Executive Moving & Storage
10. Canadian Industrial Transportation League
11. West-Rim Express Lines Ltd.
12. H. W. Kunsman Transport Ltd.
13. Tally Trucking Ltd.
14. Robert Hunter Trucking Ltd.
15. Alberta Gravel Truckers Association
16. Canadian Auto Carriers Ltd.
17. Manitoba Trucking Association

E. The following attended the Hearing in Calgary and made oral and/or written presentations:

1. Terry Richardson
2. Dennis Vincent on behalf of: Trimac Transportation Services Ltd.
3. Heck's Trucking
4. KSP Drever Transport Ltd.
5. Highwood Carriers
6. J. E. Stirling Trucking and Welding
7. Phil Walton Enterprise Hauling Ltd.
8. Weldwood of Canada Ltd.
9. R. Dykstra Trucking Ltd.
10. Gerald Fodder on behalf of: L. E. Boyer Trucking
    Butte Grain Merchants
11. Vargo Transport Ltd.
12. Carriers' Co-op Canada Inc.
13. Abe Doerksen, Town Messenger and Transfer
14. Cooney's Farm Services Ltd.
15. Central Dispatch
16. Goliath Tractor Service

F. The following attended the Hearing in Edmonton and made oral and/or written presentations:

1. Manufactured Housing Association of Alberta
2. Alberta Trucking Association
3. Service Transport Ltd.
4. Merlin Transport
5. Pierce Transport
6. Pearce Contracting
7. Mantei's Transport
8. Figol Transport Co.
9. Alberta Food Products Ltd.
10. Mannion Transport Ltd.
11. M-4 Holdings Ltd.
12. Libra Transport
13. Alberta Pork Producers Marketing Board
14. AVS Trucklines
15. Daniel Gagnon on behalf of: Department of Consumer and Corporate Affairs (Canada).

S A S K A T C H E W A N

G. The following filed written submissions with the Saskatchewan Board:

1. Cargill Limited
2. Flowers Canada National on behalf of: Flowers Canada Alberta Region
   Flowers Canada Saskatchewan Region
   Flowers Canada Manitoba Region
3. Mill City Movers
4. Crawford Commercial & Industrial Transport Ltd.
5. The Household Goods Carriers Conference/Saskatchewan Trucking Association
6. United Van Lines (Canada) Ltd.
7. Grocery Products Manufacturers of Canada
8. Superior Cartage Co. Ltd.

H. The following attended the Hearing in Regina and made oral and/or written presentations:

1. Daniel Gagnon on behalf of: Department of Consumer and Corporate Affairs (Canada)
2. Prairie Implement Manufacturers Association
3. Saskatchewan-Manitoba Manufacturers Association
4. Saskatchewan Wholesale Implement Association
5. LBJ Trucking
6. Hugh Gabruch on behalf of: V.O.T. Transport
   Tri-Line Expressways
   Richards Transport
   International Transport
   D & D Livestock
   Powers Transport
   Kelvington Transport
7. L. E. Matchett Trucking
8. Ray Moffat on behalf of: R S L Transport
9. Jack's Moving Ltd.
10. Dwaine Entner
11. Bruce Russell and
    Ray Atkinson on behalf of: Director of Investigation and Research/ Combines Investigation Act
12. Allan Kissner

I. The following attended the Hearing in Saskatoon and made oral and/or written presentations:

1. Daniel Gagnon on behalf of: Department of Consumer and Corporate Affairs (Canada)
2. Canadian Association of Movers
3. Household Goods Carriers Conference/Saskatchewan Trucking Association
4. Moellenbeck Transport Ltd.
5. Sitter's Transport Ltd.
6. H. A. Musty Transport
7. T & T Trucking Ltd.
8. Dean Saul on behalf of: Canadian Auto Carriers Ltd.
9. Harvey Wagner Trucking Ltd.
10. Consumers Association of Canada
11. William Preston on behalf of: N. Yanke Transport Ltd.
12. Canadian Industrial Traffic League
13. Norm's Hauling Ltd.
14. Canadian Brotherhood of Railway Transport and General Workers
15. Trimac Transportation Services Ltd.
16. Kindersley Tansport Ltd.
17. Bloom Bros. II Trucking
18. Saskatchewan Beekeepers Association
19. Saskatchewan Pork Producers Marketing Board
20. Ruben's Transport
21. Sam's General Trucking
22. Rempel Trail Transportation Ltd.
23. Jack Walsh of The Saskatchewan Trucking Association on behalf of: The Manitoba Trucking Association